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| <p>Page 5</p> <p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 FOR THE EASTERN DISTRICT OF MISSOURI</p> <p>3 EASTERN DIVISION</p> <p>4 KATARZYNA FOULGER, et al.,</p> <p>5 Plaintiffs,</p> <p>6 vs. Case No. 4:22-CV-00878</p> <p>7 AVERTEST, LLC d/b/a AVERHEALTH,</p> <p>8 Defendant.</p> <p>9</p> <p>10 VIDEO-RECORDED DEPOSITION</p> <p>11 OF DOMINIQUE DELAGNES, produced, sworn, and examined</p> <p>12 on JULY 8, 2024, between the hours of eight o'clock</p> <p>13 in the forenoon and six o'clock in the afternoon of</p> <p>14 that day, at the office of Armstrong Teasdale, 7700</p> <p>15 Forsyth Boulevard, St. Louis, Missouri, before</p> <p>16 Tammie A. Heet, a Registered Professional Reporter,</p> <p>17 Certified Shorthand Reporter and Notary Public</p> <p>18 within and for the states of Illinois and Missouri,</p> <p>19 in a certain cause now pending before the United</p> <p>20 States District Court for the Eastern District of</p> <p>21 Missouri, Eastern Division in re: Katarzyna Foulger,</p> <p>22 et al. vs. Avertest, LLC d/b/a Averhealth; on behalf</p> <p>23 of the Plaintiffs.</p> <p>24</p> <p>25</p>   | <p>Page 7</p> <p>1 IT IS HEREBY STIPULATED AND AGREED by</p> <p>2 and between counsel for the Plaintiffs and counsel</p> <p>3 for the Defendant that this deposition may be taken</p> <p>4 in shorthand by Tammie A. Heet, RPR, CSR, CCR and</p> <p>5 notary public, and afterwards transcribed into</p> <p>6 printing, and signature by the witness expressly</p> <p>7 reserved.</p> <p>8 THE VIDEOGRAPHER: We are now on the</p> <p>9 record. Today's date is July the 8th, 2024. The</p> <p>10 time's approximately 9:15 a.m., Central Standard</p> <p>11 Time. This begins the video-recorded deposition of</p> <p>12 Dominique Delagnes in the matter of Foulger v.</p> <p>13 Avertest, Case Number 4:22-CV-00878 in the United</p> <p>14 States District Court for the Eastern District of</p> <p>15 Missouri.</p> <p>16 This deposition is being held at the</p> <p>17 law offices of Armstrong Teasdale. The reporter's</p> <p>18 name is Tammie Heet. My name's David Doell and I</p> <p>19 am the legal videographer. We are here with</p> <p>20 Lexitas. Would the attorneys attending please</p> <p>21 introduce yourselves and the parties you represent?</p> <p>22 MR. CORNFELD: I'm Rick Cornfeld. I</p> <p>23 represent the plaintiffs.</p> <p>24 MR. PLEBAN: J.C. Pleban for the</p> <p>25 plaintiffs.</p> |
| <p>Page 6</p> <p>1 APPEARANCES</p> <p>2 For the Plaintiffs:</p> <p>3 Mr. Richard S. Cornfeld, Esq.</p> <p>4 GOLDENBERG HELLER ANTOGNOLI, PC</p> <p>5 2227 South State Route 157</p> <p>6 Edwardsville, Illinois 62025</p> <p>7 618/656-5150</p> <p>8 rick@ghalaw.com</p> <p>9 Mr. J.C. Pleban, Esq.</p> <p>10 PLEBAN &amp; ASSOCIATES LAW</p> <p>11 2010 South Big Bend Boulevard</p> <p>12 St. Louis, Missouri 63117</p> <p>13 314/645-6666</p> <p>14 jc@plebanlaw.com</p> <p>15 Mr. Anthony Jenkins, Esq.</p> <p>16 ARIAS SANGUINETTI WANG &amp; TEAM, LLP</p> <p>17 6701 Center Drive West, 14th Floor</p> <p>18 Los Angeles, California 90045</p> <p>19 310/844-9696</p> <p>20 anthony@aswtlawyers.com</p> <p>21 For the Defendant:</p> <p>22 Mr. Nicholas P. Cejas, Esq.</p> <p>23 Ms. Colleen Kinsey, Esq.</p> <p>24 ARMSTRONG TEASDALE, LLP</p> <p>25 7700 Forsyth Boulevard, Suite 1800</p> <p>St. Louis, Missouri 63105</p> <p>314/342-8040</p> <p>ncejass@atlpl.com</p> <p>ckinsey@atlpl.com</p> <p>Reported/Video-Recorded By:</p> <p>Ms. Tammie A. Heet, RPR, CSR(IL), CCR(MO)</p> <p>Mr. David Doell, Legal Videographer</p> <p>LEXITAS LEGAL</p> <p>711 North 11th Street</p> <p>St. Louis, Missouri 63101</p> <p>314/644-2191</p> | <p>Page 8</p> <p>1 MR. CEJAS: Nick Cejas and Colleen</p> <p>2 Kinsey on behalf of the defendants.</p> <p>3 THE VIDEOGRAPHER: Would the court</p> <p>4 reporter please swear in the witness and we may</p> <p>5 proceed.</p> <p>6 * * * * *</p> <p>7 DOMINIQUE DELAGNES,</p> <p>8 of lawful age, produced, sworn, and examined on</p> <p>9 behalf of Plaintiffs, deposes and says:</p> <p>10 EXAMINATION</p> <p>11 QUESTIONS BY MR. CORNFELD:</p> <p>12 Q. Good morning, Ms. Delagnes.</p> <p>13 A. Good morning.</p> <p>14 Q. We just met. I just introduced</p> <p>15 myself to you. I am Rick Cornfeld. I represent</p> <p>16 the plaintiffs in this lawsuit. I assume you've</p> <p>17 had your deposition taken before.</p> <p>18 A. I have not had my deposition taken</p> <p>19 before. I've been -- I've testified in one</p> <p>20 course -- in one court hearing.</p> <p>21 Q. Okay. I assume you've had the ground</p> <p>22 rules explained to you.</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And you know that I'll be</p> <p>25 asking you questions?</p>   |

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| <p>Page 9</p> <p>1 <b>A. Yes.</b></p> <p>2 Q. And you'll be answering the questions</p> <p>3 under oath?</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. Okay. And if any time you don't</p> <p>6 hear, you think you didn't hear my question right</p> <p>7 or you didn't understand it, will you let me know</p> <p>8 immediately so that I can either restate it or</p> <p>9 rephrase it to make it understandable?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. All right. And if at any time you'd</p> <p>12 like to take a break, just let me know. My only</p> <p>13 stipulation is that you wait until if there's a</p> <p>14 question pending, you answer the question first.</p> <p>15 <b>A. Understood.</b></p> <p>16 Q. I've never done this before.</p> <p>17 That was -- just for the record, for</p> <p>18 the printed record, that was a joke because my</p> <p>19 microphone keeps falling off.</p> <p>20 Ms. Delagnes, let me hand you what's</p> <p>21 been marked as Exhibit 1 to this deposition. This</p> <p>22 is a document entitled Plaintiffs' Second-Amended</p> <p>23 Notice of Rule 30(b)6 Deposition directed to</p> <p>24 Defendant Avertest, LLC, d/b/a Averhealth.</p> <p>25 Do you see that?</p> | <p>Page 11</p> <p>1 Q. Before I start -- before I start</p> <p>2 asking any other questions, on -- on last</p> <p>3 Wednesday, before the holiday, I had three boxes of</p> <p>4 documents delivered for use during the deposition</p> <p>5 and I have them here. When I arrived this morning,</p> <p>6 the seals of those boxes had been broken,</p> <p>7 indicating that the boxes were opened, and I just</p> <p>8 want to confirm, you have not gone through any of</p> <p>9 those documents, have you?</p> <p>10 <b>A. I have not.</b></p> <p>11 Q. Okay. And nobody else who may have</p> <p>12 gone through those documents, did anybody tell you</p> <p>13 what any of those documents were?</p> <p>14 <b>A. No.</b></p> <p>15 Q. Did anybody ask you about any</p> <p>16 specific documents?</p> <p>17 <b>A. No.</b></p> <p>18 Q. Okay. And nobody told you they</p> <p>19 expected that I would be asking about any specific</p> <p>20 documents?</p> <p>21 <b>A. No.</b></p> <p>22 Q. Okay. In preparation for the</p> <p>23 deposition, what did you do?</p> <p>24 <b>A. Obviously, I've looked at the</b></p> <p>25 <b>Complaint, our responses to the Complaint, I've</b></p>  |
| <p>Page 10</p> <p>1 <b>A. Yes.</b></p> <p>2 Q. Are you familiar with this document?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. And you know that this is the</p> <p>5 deposition notice that will govern the proceedings</p> <p>6 today?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. All right. And you understand that</p> <p>9 you are here testifying in the capacity of a</p> <p>10 representative of Averhealth to answer questions</p> <p>11 pertaining to the topics in the deposition notice?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. All right. And you will be answering</p> <p>14 questions not on behalf of yourself, Ms. Delagnes,</p> <p>15 but on behalf of Averhealth to tell us what</p> <p>16 Averhealth knows in response to the -- to my</p> <p>17 questions?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. All right. And if -- if I, in a</p> <p>20 question refer to "you," if I use the word "you,"</p> <p>21 unless I specify that, I am talking about you as an</p> <p>22 individual, Ms. Delagnes, I am referring to you as</p> <p>23 Averhealth.</p> <p>24 Will you understand that?</p> <p>25 <b>A. Yes.</b></p>  | <p>Page 12</p> <p>1 <b>reviewed SOPs, I've reviewed documentation around</b></p> <p>2 <b>our inspection notices, the Klette report, the</b></p> <p>3 <b>Wagner report. I think I'd said our standard</b></p> <p>4 <b>operating procedures, information about employees</b></p> <p>5 <b>and -- that worked in the various collection areas,</b></p> <p>6 <b>as well as documents and communication that</b></p> <p>7 <b>occurred at the laboratory.</b></p> <p>8 <b>I'm sure that there's many other</b></p> <p>9 <b>things that I've looked at, but quite a few</b></p> <p>10 <b>documentations that -- all of the data packs and</b></p> <p>11 <b>assisted with putting together the data packs of</b></p> <p>12 <b>the test results.</b></p> <p>13 Q. You said you reviewed the SOPs, and</p> <p>14 then you said something about notices. What</p> <p>15 notices were you referring to? I don't think I</p> <p>16 heard you.</p> <p>17 <b>A. I'm not exactly sure what I said</b></p> <p>18 <b>about notices. I had indicated the Complaint.</b></p> <p>19 Q. Inspection notices?</p> <p>20 <b>A. Oh, sorry, inspection documentation.</b></p> <p>21 <b>So CAP/CLIA inspection documents.</b></p> <p>22 Q. And you mentioned the data packs.</p> <p>23 <b>A. Uh-huh.</b></p> <p>24 Q. And you said you put them together?</p> <p>25 <b>A. I assisted with the teams to pull the</b></p> |

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| <p style="text-align: right;">Page 13</p> <p><b>1 documentation.</b></p> <p>2 Q. Okay. That wasn't specifically for</p> <p>3 in preparation for this deposition, I assume, since</p> <p>4 we received those data packs some time ago.</p> <p><b>5 A. Correct.</b></p> <p>6 Q. Okay. Did you review the data packs</p> <p>7 in preparation for the deposition?</p> <p><b>8 A. I did not.</b></p> <p>9 Q. Okay. Have you reviewed the data</p> <p>10 packs since you assisted in putting them together?</p> <p><b>11 A. I have not.</b></p> <p>12 Q. Okay. Did you review any of the</p> <p>13 plaintiffs' test results in preparation for the</p> <p>14 deposition?</p> <p><b>15 A. I did not.</b></p> <p>16 Q. Did you review any of the plaintiffs'</p> <p>17 test results since putting the data -- or assisting</p> <p>18 in putting the data packs together?</p> <p><b>19 A. I don't believe so.</b></p> <p>20 Q. How much time did you spend reviewing</p> <p>21 documents in preparation for the deposition?</p> <p><b>22 A. Probably 20 hours or more.</b></p> <p>23 Q. You said that you reviewed</p> <p>24 information about employees. Can you explain that?</p> <p><b>25 A. Sure. So what was going to be</b></p>  | <p style="text-align: right;">Page 15</p> <p><b>1 A. Not specific performance evaluations,</b></p> <p><b>2 but if there was any -- I don't even know what we</b></p> <p><b>3 call that -- you know, documentation as far as if</b></p> <p><b>4 they were retrained or if they had some sort of</b></p> <p><b>5 performance eval -- or performance review done on</b></p> <p><b>6 those.</b></p> <p>7 Q. Were those documents documents that</p> <p>8 have been produced to the plaintiffs?</p> <p><b>9 A. Yes.</b></p> <p>10 Q. Did you find anything of interest in</p> <p>11 any of those documents, the ones about the</p> <p>12 laboratory employees?</p> <p><b>13 A. Can you clarify what you mean "of</b></p> <p><b>14 interest"?</b></p> <p>15 Q. Anybody receive a bad performance</p> <p>16 review?</p> <p><b>17 A. There were -- individuals are</b></p> <p><b>18 continuously retrained, so there was some</b></p> <p><b>19 documentation around retraining.</b></p> <p>20 Q. Did you meet with counsel -- and</p> <p>21 don't tell me what counsel said -- but did you meet</p> <p>22 with counsel in preparation for the deposition?</p> <p><b>23 A. Yes.</b></p> <p>24 Q. And when was that?</p> <p><b>25 A. There's been several meetings. There</b></p> |
| <p style="text-align: right;">Page 14</p> <p><b>1 covered today was -- and part of what we pulled</b></p> <p><b>2 for, to provide to you as part of discovery was</b></p> <p><b>3 information about our employees in Massachusetts,</b></p> <p><b>4 in Arizona, as well as the laboratory. So one of</b></p> <p><b>5 the items that I reviewed was to see any</b></p> <p><b>6 documentation in HR files that applied to employees</b></p> <p><b>7 that work at the laboratory in Massachusetts and in</b></p> <p><b>8 Arizona.</b></p> <p>9 Q. Were those -- were those documents in</p> <p>10 the HR files, have they been produced to the</p> <p>11 plaintiffs in this case?</p> <p><b>12 A. Yes.</b></p> <p>13 Q. And what -- what did you review about</p> <p>14 employees in the laboratory?</p> <p><b>15 A. Similarly, I would have seen -- you</b></p> <p><b>16 know, so back to their HR files, for employees</b></p> <p><b>17 around the -- the time of -- of -- that were</b></p> <p><b>18 working in the time frame that spans for this</b></p> <p><b>19 issue.</b></p> <p>20 Q. And what were you looking for?</p> <p><b>21 A. Just wanted to see if there was any</b></p> <p><b>22 kind of written -- write-ups or correspondence</b></p> <p><b>23 about the performance of those individuals.</b></p> <p>24 Q. Performance evaluations, you're</p> <p>25 talking about?</p> | <p style="text-align: right;">Page 16</p> <p><b>1 was one that was in person in St. Louis two weeks</b></p> <p><b>2 ago. We've had -- in addition to a conference call</b></p> <p><b>3 that I had had with them last week.</b></p> <p>4 Q. Okay. Two meetings?</p> <p><b>5 A. The -- the in-person were over two</b></p> <p><b>6 days. So more than two meetings.</b></p> <p>7 Q. Okay. How -- how long altogether did</p> <p>8 you meet with them?</p> <p><b>9 A. Specific to the deposition?</b></p> <p>10 Q. Yes.</p> <p><b>11 A. Around 10 hours.</b></p> <p>12 Q. Okay. I'm going to start with</p> <p>13 questions that I usually begin with when it's not a</p> <p>14 corporate designee deposition.</p> <p>15 You're employed by Averhealth,</p> <p>16 correct?</p> <p><b>17 A. Yes.</b></p> <p>18 Q. What is your position?</p> <p><b>19 A. I'm the chief executive officer.</b></p> <p>20 Q. How long have you been the chief</p> <p>21 executive officer?</p> <p><b>22 A. Since May.</b></p> <p>23 Q. Since May of this year?</p> <p><b>24 A. Correct.</b></p> <p>25 Q. You succeeded Mark Johnson?</p>  |

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1 **A. Correct.**  
 2 Q. All right. And why did Mr. Johnson  
 3 leave the position of CEO?  
 4 **A. I'm not sure.**  
 5 Q. Do you know where he is now?  
 6 **A. No, I do not.**  
 7 Q. Do you have any idea or have you been  
 8 told?  
 9 **A. I have not been told.**  
 10 Q. Or whether he is employed by somebody  
 11 else?  
 12 **A. I don't know.**  
 13 Q. Before you were CEO, you were the  
 14 chief operating officer?  
 15 **A. Correct, yes.**  
 16 Q. How long were you the chief operating  
 17 officer?  
 18 **A. I started with Averhealth in January**  
 19 **of 2014.**  
 20 Q. As COO?  
 21 **A. Yes.**  
 22 Q. And you understand COO means chief  
 23 operating officer?  
 24 **A. Yes.**  
 25 Q. I'm sorry, that was January of what

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1 year?  
 2 **A. 2014.**  
 3 Q. All right. So you -- for the events  
 4 that are relevant to this lawsuit, you were the  
 5 chief operating officer the entire time, correct?  
 6 **A. Yes.**  
 7 Q. What were your responsibilities as  
 8 COO?  
 9 **A. I had oversight over the patient care**  
 10 **centers, the field operations, the customer service**  
 11 **department, the laboratory, and at certain times,**  
 12 **human resources fell under me. There's -- when I**  
 13 **started, it did not, then it did for a while, so**  
 14 **there's been times that human resources reported**  
 15 **directly into me.**  
 16 Q. When was that?  
 17 **A. I don't know all the dates,**  
 18 **unfortunately. I'd have to go back and look. I**  
 19 **don't know.**  
 20 Q. What -- what's your best estimate?  
 21 **A. Over 10 years, it's really hard for**  
 22 **me to specify the -- the various dates of when it**  
 23 **did and did not. I honestly don't -- I can't tell**  
 24 **you that.**  
 25 Q. The first laboratory test of a

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1 plaintiff in this case was in August of 2019.  
 2 **A. Uh-huh.**  
 3 Q. From August 2019 until the last test  
 4 of a plaintiff in this case, which was in March of  
 5 2022, did you have any oversight over HR?  
 6 **A. I did.**  
 7 Q. For how long?  
 8 **A. I believe the entire time besides**  
 9 **when Mark Johnson had joined. When Mark Johnson**  
 10 **had joined, human resources fell under him. And**  
 11 **then when he departed, it fell back under me.**  
 12 **There was dotted lines, so there's always been some**  
 13 **dotted-line responsibility for human resources**  
 14 **since 2019, either directly or dotted line.**  
 15 Q. What do you mean by "dotted line"?  
 16 **A. I mean, it's a common term used in**  
 17 **companies, meaning that I had very close**  
 18 **interaction with -- often, our HR representatives**  
 19 **were, you know, asking me for information, advice**  
 20 **on handling situations, so the individual almost**  
 21 **had dual responsibility.**  
 22 Q. When did Mr. Johnson join the  
 23 company?  
 24 **A. In October of -- it was a**  
 25 **year-and-a-half ago, so in 2014, so October of**

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1 **2022.**  
 2 Q. All right. So that was after the  
 3 last of the -- of the lab tests on any of the  
 4 plaintiffs in this case?  
 5 **A. Correct.**  
 6 Q. Ms. Delagnes, handing you two  
 7 exhibits that have been marked as Exhibits 2 and 3  
 8 to this deposition. The first one is titled  
 9 Commonwealth of Massachusetts Standard Contract  
 10 Form and the second is entitled Attachment A, Scope  
 11 of Services. And they have the Bates number on the  
 12 lower right-hand corner of the first page of each,  
 13 AH0081607 and AH01 -- excuse me, AH0081618.  
 14 Do you recognize these as  
 15 Averhealth's contracts with the Commonwealth of  
 16 Massachusetts?  
 17 **A. Yes.**  
 18 Q. And were these -- was this contract  
 19 in effect during the entire relevant period,  
 20 meaning the period from the first plaintiffs' test  
 21 in August 2019 through the last plaintiffs' test in  
 22 March of 2022?  
 23 **A. Yes.**  
 24 Q. So according to Exhibit 2,  
 25 Averhealth's responsibilities were -- to the



Page 21

1 Commonwealth of Massachusetts, actually began on

2 September 1st, 2016; is that right?

3 **A. Yes.**

4 Q. And if you look at attachment A,

5 Scope of Services, that's Exhibit 3, do you see

6 that this exhibit provides the scope of the

7 services that Averhealth was going to provide and

8 did provide to -- agreed to provide to the

9 Commonwealth of Massachusetts?

10 **A. Yes.**

11 Q. If you could go down to paragraph 8,

12 which is on the third page of Exhibit 3, it says --

13 it's titled Results Reporting, and says the

14 provider, and if I can stop there.

15 Averhealth was the provider under its

16 contract with Massachusetts, correct?

17 **A. Yes.**

18 Q. It says: The provider shall report

19 all test results and related information via the

20 IMS.

21 Do you see that?

22 **A. Yes.**

23 Q. What is the IMS?

24 **A. The Information Management System**

25 **that's referenced in number 1.**

Page 22

1 Q. All right. And that was an

2 information management system or a computer system

3 that Averhealth provided to Massachusetts under

4 this contract?

5 **A. Correct. It's a web-based results**

6 **reporting -- reportal.**

7 Q. And then if we go to subparagraph D,

8 under paragraph 8, one of the items that Averhealth

9 was to provide assistance to Massachusetts

10 regarding was to assist with results

11 interpretation?

12 **A. Correct.**

13 Q. So that means if you -- if you

14 provided a result in a laboratory test, you were to

15 assist Massachusetts in interpreting that result,

16 correct?

17 **A. Yes.**

18 Q. Now if we go back up to paragraph 6,

19 this provides that part of the scope of services

20 that Averhealth was to provide in its contract with

21 Massachusetts was laboratory testing, correct?

22 **A. Yes.**

23 Q. And it says: The provider shall --

24 and if we skip down to paragraph H -- test assays

25 at the cutoff levels listed in table 1 below,

Page 23

1 correct?

2 **A. Yes.**

3 Q. And then table 1 lists various

4 assays. An assay is simply a test for a certain

5 contaminant or item or drug that is contained in a

6 sample that's being tested, correct?

7 **A. I'm not sure I understand your**

8 **question. What do you mean?**

9 Q. What do you mean, what is meant by

10 assay?

11 **A. Assay would be, yes, an individual**

12 **either drug class or specific metabolite within**

13 **that.**

14 Q. That's -- that is being tested in a

15 sample that's provided to Averhealth?

16 **A. Correct.**

17 Q. A sample of a person who provided

18 that sample such as my clients?

19 **A. Correct.**

20 Q. Who prepared table 1?

21 **A. I assume that it would have been our**

22 **proposal writer.**

23 Q. That would -- this would have been

24 part of your proposal?

25 **A. Correct.**

Page 24

1 Q. Okay. And -- and Massachusetts

2 accepted that?

3 **A. Yes.**

4 Q. And table 1 has four columns, doesn't

5 it? It has columns headed Assay, Specimen, Screen

6 Cutoff, and Confirmation Cutoff, correct?

7 **A. Yes.**

8 Q. If we could look at the first line,

9 the first item in table 1, that's for an assay for

10 amphetamines?

11 **A. For an amphetamine urine test, yes.**

12 Q. The assay is amphetamines, the

13 specimen is urine, correct?

14 **A. Yes.**

15 Q. The table actually has also specimens

16 of hair and oral fluid and breath, correct?

17 **A. Yes.**

18 Q. All right. And then the third

19 column, if we look at amphetamines, it says: The

20 screen cutoff is 1,000 ng/ml, correct?

21 **A. Uh-huh, yes.**

22 Q. What is meant by screen cutoff?

23 **A. That's an amino assay screen.**

24 Q. And that's the first stage in the

25 test that you performed for Massachusetts?

Page 25

1 **A. For the urine, yes.**  
 2 Q. All right. And then the -- the last  
 3 column is Confirmation Cutoff. What is meant by  
 4 confirmation?  
 5 **A. That's the confirmation cutoff by**  
 6 **LC-MS/MS.**  
 7 Q. LC-MS/MS stands --  
 8 **A. Liquid Chromatography tandem mass**  
 9 **spectrometry.**  
 10 Q. And let's go down to cocaine.  
 11 **A. Okay.**  
 12 Q. And do you see -- to cocaine tested  
 13 in hair, about midway or -- or a little more than  
 14 midway down the table.  
 15 **A. Uh-huh.**  
 16 Q. And this is on the page Bates H --  
 17 AH0081620.  
 18 Do you see that?  
 19 **A. I do.**  
 20 Q. All right. And it -- and it says  
 21 that the cutoff for the screen is 500 pg/mg, and  
 22 for confirmation, it's also 500 pg/mg; is that  
 23 right?  
 24 **A. Yes. That is what it was when we**  
 25 **entered into this contract in 2016.**

Page 26

1 Q. All right. And -- and throughout  
 2 the -- we have not seen an update of the contract.  
 3 **A. We -- so at the time where we entered**  
 4 **into this contract, we were outsourcing our hair**  
 5 **testing to Omega Laboratories. We brought the**  
 6 **testing in-house and we actually changed both how**  
 7 **it was being done as well as the cutoffs.**  
 8 Q. Is there an update to the contract  
 9 where that was changed?  
 10 **A. I don't believe we actually got a**  
 11 **contract amendment on that when we brought it**  
 12 **in-house.**  
 13 Q. When was that?  
 14 **A. I would have to check. I don't know**  
 15 **off the top of my head, but I look into it and**  
 16 **follow up.**  
 17 Q. Was it before or after my clients'  
 18 first test?  
 19 **A. Before. I believe it was sometime in**  
 20 **2018. We could --**  
 21 **THE WITNESS: Colleen, if we looked**  
 22 **at the -- when we first introduced the hair SOP.**  
 23 **And I don't know if it --**  
 24 MR. CEJAS: Is that just the binder  
 25 of SOPs, Colleen?

Page 27

1 MS. KINSEY: It's the oral fluid one.  
 2 Q. (BY MR. CORNFELD) Well, while  
 3 Colleen looks for that --  
 4 **A. Yes.**  
 5 Q. -- what -- what was the cutoff  
 6 changed to?  
 7 **A. If we can pull up the hair result, I**  
 8 **can tell you. I believe -- and I don't want to**  
 9 **guess, but I believe it's a hundred picograms per**  
 10 **milligram.**  
 11 Q. What is a picogram?  
 12 **A. It's a unit of measure.**  
 13 Q. It's a trillionth of a gram, correct?  
 14 **A. I believe so.**  
 15 Q. All right. It could be converted to  
 16 other units, such as a nanogram, or a billionth of  
 17 a gram, correct?  
 18 **A. Yes.**  
 19 Q. So 500 picograms per milligram would  
 20 be the equivalent of .5 nanograms per milligram,  
 21 correct?  
 22 **A. Yes.**  
 23 Q. Okay. Why was the cutoff changed to  
 24 100 picograms per milligram?  
 25 **A. Because for testing, our customers**

Page 28

1 **typically will ask us to see what analytically**  
 2 **is -- that we're capable of doing, but also have**  
 3 **the lowest amount possible, that is analytically**  
 4 **possible, so they have an accurate picture of if**  
 5 **there might be drugs in there.**  
 6 Q. Is it Averhealth's position that a  
 7 level of cocaine in hair above 100 picograms per  
 8 milligram, but below 500 picograms per milligram,  
 9 indicates use of cocaine?  
 10 **A. What we know is that that drug was in**  
 11 **there.**  
 12 Q. In the sample?  
 13 **A. In the specimen that we received,**  
 14 **correct.**  
 15 Q. Or in the specimen that you tested?  
 16 **A. In the specimen that we received and**  
 17 **tested, yes.**  
 18 Q. Well, it could have somehow got into  
 19 the specimen after you received it before it was  
 20 tested. What you know is it was in there when you  
 21 tested it.  
 22 MR. CEJAS: Object to form.  
 23 **THE WITNESS: I don't agree with**  
 24 **that.**  
 25 MR. CEJAS: Assumes facts not in

Page 29

1 evidence.

2 Go ahead.

3 Q. (BY MR. CORNFELD) You didn't test it

4 immediately upon receipt, did you, the specimen?

5 **A. We did not test it immediately upon**

6 **receipt, no.**

7 Q. What you know about when -- when the

8 specimen contained a given level is that it was

9 there when you tested it, correct?

10 **A. When we received it --**

11 Q. You know it was --

12 **A. -- put it through our appropriate**

13 **handling processes, analyzed it, and reported it.**

14 Q. Assuming the specimen stayed intact

15 until it was tested, then the specimen would have

16 had that amount when it was received. Is that what

17 you're saying?

18 **A. I don't understand your question.**

19 Q. You -- the only time you tested

20 this -- the specimen was sometime after you

21 received it, correct?

22 **A. That is correct.**

23 Q. All right. Since you changed the

24 cutoff for cocaine in hair sometime before my

25 client was tested in August 2019, have you changed

Page 30

1 it again?

2 **A. We have not.**

3 Q. So it would have been that level in

4 March of 2021, 100 picograms per milligram?

5 **A. I believe so.**

6 **THE WITNESS: Colleen, did you find**

7 **the our LC-MS?**

8 MS. KINSEY: It's the LC-MS.

9 **THE WITNESS: It's the hair testing**

10 **SOP, which would have been an LC-MS method.**

11 MS. KINSEY: I have Bates number

12 AH0086829, the hair testing SOP from April 1st,

13 2018.

14 MR. CEJAS: 86829.

15 MR. PLEBAN: Was that just from the

16 Friday?

17 MS. KINSEY: I don't believe so.

18 (A discussion was held off the

19 record.)

20 MR. CEJAS: All right. So I will --

21 I'll go ahead and put that in front of her.

22 MR. PLEBAN: Yeah, 86829 was the

23 first one.

24 MR. CEJAS: Yeah. Do you have a copy

25 of that, J.C.? Can you pull that up?

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1 MR. PLEBAN: I can pull up a digital.

2 MR. CEJAS: That's what I'm going to

3 do. I'm going to put digital in front of her.

4 I'll show you what I'm -- it's the hair test.

5 MR. PLEBAN: Yep.

6 **THE WITNESS: I don't want to get**

7 **water on anybody. Now I'm afraid to spill the**

8 **water. I guess that's safe there.**

9 MR. PLEBAN: I don't have it because

10 I don't know what my name and password would be.

11 Let's -- let's go off for just a second.

12 MR. CEJAS: Sure.

13 THE VIDEOGRAPHER: Time is 9:47 a.m.

14 We are off the record.

15 (A discussion was held off the

16 record.)

17 THE VIDEOGRAPHER: The time is

18 9:50 a.m. We are back on the record.

19 Q. (BY MR. CORNFELD) Is there a record

20 that reflects the change in the cutoff for cocaine

21 in hair from 500 to 100?

22 **A. A record where?**

23 Q. In -- in Averhealth's documents.

24 Because I can tell you I searched Averhealth

25 documents for 100 pg/mg and didn't find anything

Page 32

1 other than what was in test results.

2 **A. I don't believe that there was.**

3 Q. Is -- was there any communication

4 made to Massachusetts on the fact that that cutoff

5 was changed from what was in the contract and why?

6 **A. I don't recall. I'd have to look**

7 **into that.**

8 Q. All right. I would ask you to do

9 that.

10 **A. Okay.**

11 Q. Because as I said, if it -- if that

12 communication had included the phrase 100 pg/mg, I

13 would have found it --

14 **A. Uh-huh.**

15 Q. -- and I didn't --

16 **A. Okay.**

17 Q. -- so I would request that.

18 **A. Okay.**

19 Q. Do -- do you recall making a -- a

20 proposal to Luzerne County for a forensic drug

21 testing program in March of 2021?

22 **A. I don't recall. You can provide the**

23 **document to me, but I don't recall.**

24 Q. Sure.

25 MS. KINSEY: Can I just clarify



|   |  |
|---|--|
| <p>1 something really quickly? It -- that document did<br/> 2 come Friday. It was something Rick had identified<br/> 3 with having some corrupt pages, so we reproduced<br/> 4 it.<br/> 5 MR. PLEBAN: I see.<br/> 6 MS. KINSEY: So we did produce it<br/> 7 before, but you got it again.<br/> 8 MR. PLEBAN: Understood. Thank you.<br/> 9 Q. (BY MR. CORNFELD) Handing you what's<br/> 10 been marked as Exhibit 4 to this deposition. Do<br/> 11 you recognize this as a proposal that Averhealth<br/> 12 made to Luzerne County for a forensic drug testing<br/> 13 program in March of 2021?<br/> 14 <b>A. This says Kings County on it.</b><br/> 15 Q. Oh, did I give you the one for Kings<br/> 16 County? Let me give you Luzerne County.<br/> 17 Handing you what's been marked as<br/> 18 Exhibit 5. Do you recognize that as a proposal<br/> 19 made to Luzerne County for forensic drug testing<br/> 20 program dated March 23, 2021?<br/> 21 <b>A. I do.</b><br/> 22 Q. And this has Bates number on the<br/> 23 first page of 18473. And from now on, I'll try<br/> 24 just to read the last digits excluding the AH and<br/> 25 the 00.</p> | <p>1 Q. Yeah.<br/> 2 <b>A. Would you like to give me a different</b><br/> 3 <b>copy?</b><br/> 4 Q. Yeah. Here, would you mind putting<br/> 5 this sticker on?<br/> 6 MR. PLEBAN: Would you put it over<br/> 7 the red writing?<br/> 8 <b>THE WITNESS: Over the -- yes.</b><br/> 9 MR. PLEBAN: Yes, please, thank you.<br/> 10 <b>THE WITNESS: Absolutely.</b><br/> 11 Q. (BY MR. CORNFELD) And you see that<br/> 12 proposal?<br/> 13 <b>A. I do, yes.</b><br/> 14 Q. Okay. And this is a proposal to --<br/> 15 Exhibit 4 is a proposal to Kings County dated<br/> 16 February 24, 2021.<br/> 17 <b>A. I do see that, yes.</b><br/> 18 Q. All right. And this contains the<br/> 19 same supposed administrative error that says that<br/> 20 the cutoff for hair -- for cocaine in hair is 500<br/> 21 for both screen and confirmation?<br/> 22 <b>A. That is correct.</b><br/> 23 Q. Do you recall entering into a<br/> 24 contract for testing services with Samaritan<br/> 25 Recovery Community, Inc.?</p>   |
| <p>1 <b>A. Okay.</b><br/> 2 Q. Would you look at page 7?<br/> 3 <b>A. Of Luzerne?</b><br/> 4 Q. Yes. Do you see that?<br/> 5 <b>A. I do.</b><br/> 6 Q. This contains a table of cutoffs that<br/> 7 you were proposing for Luzerne County?<br/> 8 <b>A. I do.</b><br/> 9 Q. And do you see that the cutoff for<br/> 10 cocaine in hair was -- for both screen and<br/> 11 confirmation was 500 pg/mg?<br/> 12 <b>A. I do.</b><br/> 13 Q. So apparently it went back to 500.<br/> 14 <b>A. We did not. This is an</b><br/> 15 <b>administrative error that they must have -- that</b><br/> 16 <b>the person who put this together pulled the wrong</b><br/> 17 <b>cutoff. We've stayed at the 100.</b><br/> 18 Q. Would you look at the one for Kings<br/> 19 County and confirm that that also says 500?<br/> 20 <b>A. Sure. What page? Page 24?</b><br/> 21 Q. Okay.<br/> 22 <b>A. You tabbed it for me very nicely.</b><br/> 23 Q. Oh.<br/> 24 <b>A. That's your tab? Is that yours? I</b><br/> 25 <b>got your copy.</b></p>  | <p>1 <b>A. I don't recall off the top of my</b><br/> 2 <b>head, but if you show me a document, I'm sure I can</b><br/> 3 <b>confirm that that's the case.</b><br/> 4 Q. Handing you what's been marked as<br/> 5 Exhibit 6.<br/> 6 <b>A. You gave me two of them.</b><br/> 7 Q. Oh, let me have one.<br/> 8 Do you see that this is a contract<br/> 9 between Averhealth and Samaritan Recovery<br/> 10 Community, Inc. dated May 1st, 2021?<br/> 11 <b>A. I do.</b><br/> 12 Q. And if you would look at the page<br/> 13 Bates numbered 18755 towards the back. Do you see<br/> 14 that you agreed in your contract with Samaritan<br/> 15 Recovery Community, Inc. in May of 2021 to do<br/> 16 cocaine testing and hair with a cutoff for both<br/> 17 screen and confirmation of 500?<br/> 18 <b>A. I do see that it's listed that way,</b><br/> 19 <b>yes.</b><br/> 20 Q. Handing you what's been marked as<br/> 21 Exhibit 7 of this deposition. Do you see that this<br/> 22 is a contract between Averhealth and Jerry Ambrose<br/> 23 Veteran's Council dated August 1, 2021?<br/> 24 <b>A. Yeah, it's an MOU, a memorandum --</b><br/> 25 <b>these are -- I guess I should have clarified.</b></p> |

|  |  |
|--|--|
| <p style="text-align: right;">Page 37</p> <p><b>1 These are memorandum of understandings, not</b></p> <p><b>2 contracts, but yes.</b></p> <p>3 Q. Okay. These are agreements you</p> <p>4 entered into?</p> <p><b>5 A. Agreements, yes.</b></p> <p>6 Q. Okay. And if you would look at pages</p> <p>7 19577 and 19578, do you see the table of assays and</p> <p>8 cutoffs -- and actually, on 19579, do you see that</p> <p>9 the cutoff for cocaine in hair in your agreement</p> <p>10 with Jerry Ambrose Veteran's Council was also 500</p> <p>11 pg/mg?</p> <p><b>12 A. Yes.</b></p> <p>13 Q. So you were continuing to enter into</p> <p>14 contracts and make proposals with hair tested with</p> <p>15 a cutoff for cocaine of 500 after you lowered</p> <p>16 the -- the cutoff to 100 when you did tests on</p> <p>17 people like my client, David Shnitzer.</p> <p>18 MR. CEJAS: Object to form.</p> <p>19 Foundation, assumes facts not in evidence as to a</p> <p>20 contract. This is a memorandum of understanding.</p> <p>21 MR. CORNFELD: I said agreement.</p> <p>22 Q. (BY MR. CORNFELD) Go ahead.</p> <p><b>23 A. I believe you did say contract.</b></p> <p>24 Q. Okay. Well, in your -- in your --</p> <p>25 let me -- let me rephrase the question.</p>   | <p style="text-align: right;">Page 39</p> <p><b>1 A. No.</b></p> <p>2 Q. Are you familiar with the Society of</p> <p>3 Hair Testing?</p> <p><b>4 A. Yes.</b></p> <p>5 Q. What is it?</p> <p><b>6 A. It is a body that talks about the</b></p> <p><b>7 testing of hair.</b></p> <p>8 Q. It's a scientific organization of the</p> <p>9 top experts in hair testing from around the world,</p> <p>10 correct?</p> <p><b>11 A. I don't know if it's top in the</b></p> <p><b>12 world. It is an organization that talks about hair</b></p> <p><b>13 testing.</b></p> <p>14 Q. Are you aware of any other</p> <p>15 organization that publishes standards on hair</p> <p>16 testing, an organization of international experts?</p> <p><b>17 A. I'm not sure. I'd need to do some</b></p> <p><b>18 research on that.</b></p> <p>19 Q. All right. And the Society of Hair</p> <p>20 Testing -- which is abbreviated SoHT, correct?</p> <p><b>21 A. Uh-huh.</b></p> <p>22 Q. They have conference -- you need to</p> <p>23 say yes rather than uh-huh.</p> <p><b>24 A. I apologize. Yes.</b></p> <p>25 Q. Okay. They have conferences and they</p>  |
| <p style="text-align: right;">Page 38</p> <p>1 You -- you continued to enter into</p> <p>2 agreements and make proposals to customers for</p> <p>3 forensic drug testing services in which you said</p> <p>4 that, and agreed, that the cutoff for cocaine in</p> <p>5 hair would be 500 milligrams after you changed it</p> <p>6 to only 100 for my client, correct?</p> <p><b>7 A. The cutoff that was listed in the</b></p> <p><b>8 document did state 500, yes.</b></p> <p>9 Q. Okay. And that was -- that was what</p> <p>10 you agreed to do with these customers, correct?</p> <p><b>11 A. It was what was listed --</b></p> <p>12 Q. In your --</p> <p><b>13 A. -- and it didn't have the most</b></p> <p><b>14 up-to-date cutoff. What we were actually running</b></p> <p><b>15 was different.</b></p> <p>16 Q. And I -- I could show you additional</p> <p>17 agreements that you entered into, but you have no</p> <p>18 doubt that you continued to agree and tell</p> <p>19 customers that the cutoff for cocaine in hair would</p> <p>20 be 500 milligrams, correct? 500 -- 500 picograms</p> <p>21 per milligram?</p> <p><b>22 A. Our MOUs did list that as the cutoff.</b></p> <p>23 Q. Are you aware that the scientific</p> <p>24 literature and scientific bodies agree that the</p> <p>25 cutoff for cocaine in hair should be 500?</p> | <p style="text-align: right;">Page 40</p> <p>1 publish scientific papers, correct?</p> <p><b>2 A. Yes.</b></p> <p><b>3 You gave me two again.</b></p> <p>4 Q. I've handed you what's been marked as</p> <p>5 Exhibit 8, which is a paper published in Forensic</p> <p>6 Science International entitled Society of Hair</p> <p>7 Testing Guidelines for Drug Testing in Hair. The</p> <p>8 authors are Gail A.A. Cooper, Robert Kronstrand,</p> <p>9 and Pascal Kintz.</p> <p>10 Do you have that?</p> <p><b>11 A. I do.</b></p> <p>12 Q. Are you familiar with this?</p> <p><b>13 A. This is the first time I'm actually</b></p> <p><b>14 reading this document.</b></p> <p>15 Q. Okay. I can tell you there was a</p> <p>16 copy in the documents that Averhealth produced, but</p> <p>17 it wasn't a very good copy, so --</p> <p><b>18 A. Okay.</b></p> <p>19 Q. -- I had a better copy produced.</p> <p>20 And Averhealth has published a -- a</p> <p>21 document that it has in its files entitled</p> <p>22 Scientific References, correct?</p> <p><b>23 A. Yes.</b></p> <p>24 Q. I've handed you what's been marked as</p> <p>25 Exhibit 9 to this deposition. Do you recognize</p> |

|   |  |
|---|--|
| <p>1 that as Averhealth's --</p> <p>2 <b>A. I'm still reading this document, if</b></p> <p>3 <b>that's okay.</b></p> <p>4 Q. We'll get to it. I just want to --</p> <p>5 <b>A. Okay.</b></p> <p>6 Q. -- and I'll let you -- we'll go</p> <p>7 through it, but would you take a look at Exhibit 9,</p> <p>8 Ms. Delagnes?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. Exhibit 9, which is in front of you.</p> <p>11 Is that Averhealth's paper entitled Scientific</p> <p>12 References?</p> <p>13 <b>A. Yes, it is.</b></p> <p>14 Q. And do you see that on the last page</p> <p>15 under the heading Analysis of Drugs and Hair, it</p> <p>16 lists this document, the Society of Hair Testing,</p> <p>17 Guidelines for Drug Testing in Hair?</p> <p>18 <b>A. On which page?</b></p> <p>19 Q. On the last page.</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. All right. Are you familiar -- go</p> <p>22 back to Exhibit 8.</p> <p>23 Are you familiar with any of these</p> <p>24 authors?</p> <p>25 <b>A. I've heard of them.</b></p>      | <p>1 fact that they wrote this paper?</p> <p>2 <b>A. I do not.</b></p> <p>3 Q. If we look at the introduction of</p> <p>4 Exhibit 8, it says: Founded in 1995, the Society</p> <p>5 of Hair Testing, SoHT, has a worldwide network of</p> <p>6 members involved in hair testing and has published</p> <p>7 several guidance documents relating to the</p> <p>8 examination of drugs and doping agents in hair.</p> <p>9 Do you see that?</p> <p>10 <b>A. I do. Yes.</b></p> <p>11 Q. And it -- and it states: The SoHT --</p> <p>12 if you look down one paragraph. The SoHT</p> <p>13 understands the importance of setting industry</p> <p>14 standards to ensure the future of hair testing and</p> <p>15 its continued acceptance as evidence in court, and</p> <p>16 actively encourage its members to participate in</p> <p>17 the society's annual proficiency testing scheme.</p> <p>18 Do you see that?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. And it says: These guidelines -- if</p> <p>21 you look at the bottom of the first column on the</p> <p>22 first page of Exhibit 8: These guidelines for drug</p> <p>23 testing and hair were reviewed and approved by the</p> <p>24 Board of the Society of Hair Testing at the annual</p> <p>25 board meeting held in Sevilla in January 2011.</p> |
| <p>1 Q. Which ones have you heard of?</p> <p>2 <b>A. I mean, obviously, it's referenced in</b></p> <p>3 <b>here, right?</b></p> <p>4 Q. Yes.</p> <p>5 <b>A. That's what I would know about them.</b></p> <p>6 Q. Referencing here, you were pointing</p> <p>7 to the Averhealth --</p> <p>8 <b>A. The Society of -- of Hair Testing</b></p> <p>9 <b>guidelines --</b></p> <p>10 Q. In -- in --</p> <p>11 <b>A. -- for Drug Testing in Hair, so</b></p> <p>12 <b>C. Cooper --</b></p> <p>13 Q. In --</p> <p>14 <b>A. -- R. Kronstrand, P. Kintz.</b></p> <p>15 Q. In -- in Exhibit 9 entitled The</p> <p>16 Scientific References that Averhealth compiled,</p> <p>17 correct?</p> <p>18 <b>A. Uh-huh.</b></p> <p>19 MR. CEJAS: Is that yes?</p> <p>20 <b>THE WITNESS: Yes. I apologize.</b></p> <p>21 <b>Thank you.</b></p> <p>22 MR. CEJAS: Everybody does it.</p> <p>23 <b>THE WITNESS: I will get used to yes.</b></p> <p>24 Q. (BY MR. CORNFELD) Do you know</p> <p>25 anything about any of these authors other than the</p> | <p>1 Do you see that?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. And -- and since you included this</p> <p>4 paper in your list of scientific references, you</p> <p>5 would trust what they state in this paper and what</p> <p>6 they -- what they approved at their meeting in</p> <p>7 Sevilla in January 2011 as set forth in Exhibit 8,</p> <p>8 correct?</p> <p>9 MR. CEJAS: Object to -- object to</p> <p>10 form. Vague.</p> <p>11 Subject to that, go ahead.</p> <p>12 <b>THE WITNESS: Specifically what are</b></p> <p>13 <b>you referring to in the document?</b></p> <p>14 Q. (BY MR. CORNFELD) Anything in the</p> <p>15 document. I mean, you put --</p> <p>16 <b>A. It's a broad document that's</b></p> <p>17 <b>referenced. Tell me specifically within the</b></p> <p>18 <b>document which -- what you're asking me to agree</b></p> <p>19 <b>with.</b></p> <p>20 Q. You would trust what they say,</p> <p>21 correct?</p> <p>22 MR. CEJAS: Same objection.</p> <p>23 <b>THE WITNESS: Too broad. Can you be</b></p> <p>24 <b>more specific in your question?</b></p> <p>25 Q. (BY MR. CORNFELD) You used it as a</p>   |

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| <p>1 reference.</p> <p>2 <b>A. Okay.</b></p> <p>3 Q. Is that right?</p> <p>4 <b>A. Yes. It was used as a reference,</b></p> <p>5 <b>yes.</b></p> <p>6 Q. And that was so that your employees</p> <p>7 would see it and know that this is a source that</p> <p>8 they could go to for authoritative information,</p> <p>9 correct?</p> <p>10 MR. CEJAS: Object to form.</p> <p>11 <b>THE WITNESS: To provide guidance and</b></p> <p>12 <b>information, yes.</b></p> <p>13 Q. (BY MR. CORNFELD) All right. Let's</p> <p>14 look at Table 1 on page 23 of Exhibit 8. Do you</p> <p>15 see Table 1 is entitled: Recommended Cutoffs for</p> <p>16 Substances and Metabolites in Hair to Identify Use?</p> <p>17 <b>A. I'm going to read all of 6 first</b></p> <p>18 <b>before I look at that, if that would be okay, to</b></p> <p>19 <b>read through the entire testing procedures.</b></p> <p>20 Q. Sure.</p> <p>21 <b>A. Okay. Thank you. Thank you for</b></p> <p>22 <b>giving me that opportunity.</b></p> <p>23 Q. All right. So you see Table 1 is</p> <p>24 entitled: Recommended Cutoffs for Substances and</p> <p>25 Metabolites in Hair to Identify Use?</p>                              | <p>Page 45</p> <p>1 <b>metabolite of it, which is benzoylecgonine, which</b></p> <p>2 <b>is what we're testing for as well, and that has</b></p> <p>3 <b>.05.</b></p> <p>4 Q. I see that. That was my next</p> <p>5 question.</p> <p>6 <b>A. Okay.</b></p> <p>7 Q. And .05 nanograms per milligram is</p> <p>8 the equivalent of 50 picograms per milligram,</p> <p>9 correct? 50 nanograms per milligram, I should say.</p> <p>10 <b>A. It's .05 nanograms per milligram.</b></p> <p>11 <b>.05.</b></p> <p>12 Q. Oh, I'm sorry, 50 picograms, the</p> <p>13 equivalent of --</p> <p>14 <b>A. Picogram.</b></p> <p>15 Q. Yeah. Just so we have a clear</p> <p>16 record, what they list in Table 1 of the cutoff for</p> <p>17 the metabolites of cocaine, such as BZE --</p> <p>18 <b>A. Which is benzoylecgonine.</b></p> <p>19 Q. Okay. And they say -- and that's</p> <p>20 also sometimes abbreviated BE, correct?</p> <p>21 <b>A. That is correct.</b></p> <p>22 Q. And they say that the cutoff to</p> <p>23 identify use is .05 nanograms per milligram, which</p> <p>24 would be the equivalent of 50 picograms per</p> <p>25 milligram, correct?</p> <p>Page 47</p> |
| <p>Page 46</p> <p>1 <b>A. It does say that, yes.</b></p> <p>2 Q. All right. And this is a table</p> <p>3 that's contained in Exhibit 8, the Society of Hair</p> <p>4 Testing's paper that has guidelines for drug</p> <p>5 testing and hair, correct?</p> <p>6 <b>A. It does. It also does say in the</b></p> <p>7 <b>paragraph below that when hair analysis is utilized</b></p> <p>8 <b>in DFC cases, lower cutoffs should be employed.</b></p> <p>9 Q. Do you see -- and where is that?</p> <p>10 <b>A. The paragraph above.</b></p> <p>11 Q. What are DFC cases?</p> <p>12 <b>A. Department of Family and Children</b></p> <p>13 <b>Services.</b></p> <p>14 Q. Do you see that under Table 1, it</p> <p>15 says that the -- the recommended cutoffs for</p> <p>16 substances and metabolites in hair to identify use</p> <p>17 is .5 nanograms per milligram?</p> <p>18 <b>A. I do.</b></p> <p>19 Q. And that's the equivalent of 500</p> <p>20 micrograms per milligram, correct?</p> <p>21 <b>A. For cocaine, yes. And then below</b></p> <p>22 <b>that, it has --</b></p> <p>23 Q. Excuse me, that -- that was my</p> <p>24 question.</p> <p>25 <b>A. And below, it talks about the</b></p> | <p>Page 48</p> <p>1 <b>A. That is what this chart says, yes.</b></p> <p>2 <b>There is a paragraph above, though, which I had</b></p> <p>3 <b>stated previously --</b></p> <p>4 Q. You've told us about it.</p> <p>5 MR. CEJAS: Let her -- let her</p> <p>6 finish, Rick.</p> <p>7 MR. CORNFELD: My question --</p> <p>8 MR. CEJAS: Rick, let her finish.</p> <p>9 Q. (BY MR. CORNFELD) My question was</p> <p>10 just that's what the table says.</p> <p>11 <b>A. That is what the table says.</b></p> <p>12 Q. Thank you.</p> <p>13 <b>A. I would like to --</b></p> <p>14 Q. Thank you.</p> <p>15 <b>A. -- state, though, that --</b></p> <p>16 Q. You've already --</p> <p>17 <b>A. -- the paragraph above it --</b></p> <p>18 Q. You've already said that.</p> <p>19 <b>A. -- indicates that --</b></p> <p>20 MR. CEJAS: Let her finish.</p> <p>21 Q. (BY MR. CORNFELD) Let me ask you --</p> <p>22 COURT REPORTER: Okay. Okay, guys.</p> <p>23 We have to do one at a time.</p> <p>24 Q. (BY MR. CORNFELD) Do you believe</p> <p>25 that there is a different amount that would</p>  |

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| <p>Page 49</p> <p>1 identify use in somebody who's involved in a<br/>2 Department of Family and Children's case --<br/>3 <b>A. I don't understand your question.</b><br/>4 Q. I didn't finish it.<br/>5 <b>A. Okay.</b><br/>6 Q. Is there a different amount that<br/>7 would identify use in a Department of Family and<br/>8 Children's case than in any other case?<br/>9 <b>A. I still don't -- I apologize, I do</b><br/>10 <b>not understand what you're asking.</b><br/>11 Q. Does a lower amount in a -- in a --<br/>12 in somebody involved in a Department of Family and<br/>13 Children's case indicate that that person used<br/>14 cocaine than a person involved in any other type of<br/>15 case?<br/>16 <b>A. By establishing lower cutoffs, you're</b><br/>17 <b>going to be able to potentially check a longer time</b><br/>18 <b>frame. And so we typically see in Department of</b><br/>19 <b>Children and Family, in probation, those cutoffs</b><br/>20 <b>that are established are much lower than in the</b><br/>21 <b>workplace world. So there is a scientific reason</b><br/>22 <b>to establish lower cutoffs for this space.</b><br/>23 Q. Does cocaine have a different affect<br/>24 on somebody in a Department of Family and<br/>25 Children's case than somebody, say, in an</p> | <p>Page 51</p> <p>1 for a little over an hour. Whenever you're ready<br/>2 to change topics, take a break.<br/>3 MR. CORNFELD: We can -- we can --<br/>4 MR. CEJAS: Okay.<br/>5 MR. CORNFELD: I'm changing it right<br/>6 now.<br/>7 MR. CEJAS: I thought you were. I<br/>8 thought you were.<br/>9 THE VIDEOGRAPHER: Go off?<br/>10 MR. PLEBAN: I think so, yeah.<br/>11 THE VIDEOGRAPHER: Time is 10:16 a.m.<br/>12 We are off the record.<br/>13 (A short break was taken.)<br/>14 THE VIDEOGRAPHER: The time is 10:29.<br/>15 We are back on the record.<br/>16 Q. (BY MR. CORNFELD) Ms. Delagnes, you<br/>17 have in front of you what's been marked as<br/>18 Exhibit 10, which is a document entitled Michigan<br/>19 Proven Quality Averhealth, Smarter Solutions,<br/>20 Better Outcomes. It has a Bates number 3509 on the<br/>21 first page.<br/>22 Are you familiar with this?<br/>23 <b>A. Yes.</b><br/>24 Q. What is this?<br/>25 <b>A. This is information that we had</b></p>   |
| <p>Page 50</p> <p>1 employment case?<br/>2 <b>A. Cocaine's going to affect their body</b><br/>3 <b>the same way.</b><br/>4 Q. Thank you.<br/>5 And -- and does the laboratory have<br/>6 any idea knowing whether somebody's in -- strike<br/>7 that.<br/>8 Are you familiar with the Goldilocks<br/>9 Rule?<br/>10 <b>A. I am.</b><br/>11 Q. Okay. You -- you named the<br/>12 Goldilocks Rule, didn't you?<br/>13 <b>A. Yes.</b><br/>14 Q. All right. And that's the rule that<br/>15 a cutoff shouldn't be too high or too low, but just<br/>16 right, correct?<br/>17 <b>A. Correct.</b><br/>18 Q. And you've been talking -- you,<br/>19 personally, when I say you developed --<br/>20 <b>A. You mean Averhealth, correct.</b><br/>21 Q. Yes. But you, Ms. Delagnes, have<br/>22 been talking about the Goldilocks Rule for some<br/>23 time, correct?<br/>24 <b>A. Yes.</b><br/>25 MR. CEJAS: Rick, we've been going</p>   | <p>Page 52</p> <p>1 <b>provided to Michigan.</b><br/>2 Q. And did you do that in a<br/>3 presentation?<br/>4 <b>A. Yes.</b><br/>5 Q. Who was it given to?<br/>6 <b>A. I believe it was to a specific county</b><br/>7 <b>in Michigan that we provided. We also would have</b><br/>8 <b>given it to Amanda Doane, who was the contracting</b><br/>9 <b>officer over Michigan.</b><br/>10 Q. If you would, turn to page 3515<br/>11 titled Getting Levels Just Right, the Goldilocks<br/>12 Rule.<br/>13 <b>A. Yes.</b><br/>14 Q. And this refers to the Goldilocks<br/>15 Rule that Averhealth developed, correct?<br/>16 <b>A. I don't know that we developed, but</b><br/>17 <b>yes, this -- this -- we used the phrase the</b><br/>18 <b>Goldilocks -- the Goldilocks Rule.</b><br/>19 Q. All right. And this page on<br/>20 Exhibit 10 states: Cutoff levels help to ensure<br/>21 that drug testing is scientifically valid and<br/>22 forensically defensible by serving as a safeguard<br/>23 designed to ensure the reliability of testing<br/>24 results.<br/>25 Correct?</p> |



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| <p>Page 53</p> <p>1 <b>A. Yes.</b></p> <p>2 Q. And then you've got a little diagram</p> <p>3 on the left-hand side of this page that has</p> <p>4 three -- are those bowls on the left of it?</p> <p>5 <b>A. Yes, they are bowls.</b></p> <p>6 Q. Okay. Labeled too much, just right,</p> <p>7 and too little?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. And those are labeled reaction?</p> <p>10 <b>A. Correct.</b></p> <p>11 Q. What is -- what is meant by reaction?</p> <p>12 <b>A. How much of the drug or analyte's</b></p> <p>13 <b>found in specimen. So what's the reaction off the</b></p> <p>14 <b>analyzer.</b></p> <p>15 Q. All right. And -- and you show a</p> <p>16 cutoff level right in the middle of the just right</p> <p>17 bowl, correct?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. And you say that: If the cutoff is</p> <p>20 too high, meaning too much, it would lead to false</p> <p>21 negatives, missed new-use events, and client,</p> <p>22 child, and public safety are in danger.</p> <p>23 Do you see that?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. And if the cutoff level is just</p>  | <p>Page 55</p> <p>1 the drug in the specimen and it is above the cutoff</p> <p>2 level that is just right, does that indicate drug</p> <p>3 use by the individual?</p> <p>4 <b>A. When we talk about giving</b></p> <p>5 <b>interpretation, drug result interpretation, we will</b></p> <p>6 <b>look at factors that the -- that the caseworker or</b></p> <p>7 <b>the defendant indicates as far as what's happening</b></p> <p>8 <b>in their environment, what the cutoff levels are,</b></p> <p>9 <b>what circumstances are, and we'll make</b></p> <p>10 <b>determinations whether or not it could possibly --</b></p> <p>11 <b>that it's from use or not.</b></p> <p>12 MR. CORNFELD: Could you read that</p> <p>13 answer back, please?</p> <p>14 (The preceding answer was read back.)</p> <p>15 <b>THE WITNESS: The result itself is</b></p> <p>16 <b>forensically defensible. It -- we found that drug</b></p> <p>17 <b>in that specimen that was received at the</b></p> <p>18 <b>laboratory. That's what our test results show.</b></p> <p>19 Q. (BY MR. CORNFELD) Okay. You said as</p> <p>20 factors as far as environment, circumstances. What</p> <p>21 did you mean by environment?</p> <p>22 <b>A. There are times where our customers</b></p> <p>23 <b>will ask for interpretation of those results, if</b></p> <p>24 <b>it's possible that that result could be from</b></p> <p>25 <b>environmental reasons. The drug was there, we</b></p> |
| <p>Page 54</p> <p>1 right, that's scientifically valid and forensically</p> <p>2 defensible?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. And if it's too low or too little,</p> <p>5 that leads to inconclusive results, uncertainty</p> <p>6 regarding environmental exposure; i.e., not always</p> <p>7 forensically defensible. Caseworkers and others</p> <p>8 invest time in futile efforts, and clients develop</p> <p>9 learned helplessness; is that right?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. What is meant by "forensically</p> <p>12 defensible"? Does that mean that you can defend</p> <p>13 the result in a forensic proceeding, such as a</p> <p>14 legal proceeding, as indicating use by the</p> <p>15 individual?</p> <p>16 <b>A. It means that we can forensically</b></p> <p>17 <b>defend that we found that drug in the specimen.</b></p> <p>18 Q. And that it would indicate use by the</p> <p>19 individual?</p> <p>20 <b>A. What we can attest to is that we</b></p> <p>21 <b>found that drug in the specimen.</b></p> <p>22 Q. And you're not expressing a view on</p> <p>23 whether it indicates use?</p> <p>24 <b>A. I don't understand the question.</b></p> <p>25 Q. Are you -- are you -- when you find</p> | <p>Page 56</p> <p>1 <b>found it. We definitively saw that we saw a drug</b></p> <p>2 <b>in the specimen, and then a client may come back to</b></p> <p>3 <b>their caseworker and indicate, hey, here's my</b></p> <p>4 <b>circumstances, and the caseworker will ask our</b></p> <p>5 <b>toxicologist for interpretations, if it could be</b></p> <p>6 <b>possible environmental.</b></p> <p>7 Q. What do you mean by environmental?</p> <p>8 Not from -- not from drug use, but there was</p> <p>9 cocaine in the environment in some fashion?</p> <p>10 <b>A. Correct.</b></p> <p>11 Q. Or some other reason why the drug was</p> <p>12 there other than drug use?</p> <p>13 <b>A. Correct.</b></p> <p>14 Q. All right. And the right-hand side</p> <p>15 of the Goldilocks page in Exhibit 10, it says,</p> <p>16 quote: From a legal perspective, a specimen that</p> <p>17 reduces a reaction just below the cutoff level is</p> <p>18 as equally negative as a specimen that produces a</p> <p>19 reaction far below the cutoff level, unquote.</p> <p>20 Do you see that?</p> <p>21 <b>A. I do.</b></p> <p>22 Q. And is that a true statement?</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. So it doesn't matter how far below</p> <p>25 the cutoff level or result is, negative is</p>  |

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1 negative, and it means the drug wasn't there?

2 **A. In that specimen.**

3 Q. Is that right?

4 **A. Yes, in that specimen.**

5 Q. I am handing you what's been marked

6 as Exhibits 11 and 12 to this deposition. Exhibit

7 11 is a document with the number 6219 on the first

8 page titled Shnitzer Data Pack Accession Number,

9 and then there's a long number, collection date

10 8/23/2019.

11 And Exhibit 12 is numbered 7649 on

12 the first page entitled Shnitzer Data Pack

13 Accession Number, and then there's a long number,

14 and it's collection date 9/23/2019.

15 Do you have those?

16 **A. I do.**

17 Q. Are you familiar with them?

18 **A. Yes.**

19 Q. These are the data packs for the two

20 tests of David Shnitzer that came back positive,

21 correct?

22 **A. Yes.**

23 Q. Do these and the other data packs

24 that Averhealth produced on the plaintiffs' tests

25 contain all the information that's necessary for an

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1 expert to review and determine that the test

2 results are valid?

3 **A. Yes.**

4 Q. It is -- do these exhibits and the

5 other data packs contain all the underlying data

6 for and evidencing Plaintiff's positive tests for

7 the presence of illicit substances?

8 **A. I don't understand your question.**

9 Q. Let me -- let me restate it, or

10 re-ask it.

11 Has Averhealth produced, with these

12 two exhibits and the other data packs, all the

13 underlying data for and evidencing Plaintiff's

14 positive tests for the presence of illicit

15 substances?

16 **A. Yes.**

17 Q. And that's what's contained in

18 Exhibits 11 and 12 for David Shnitzer's tests,

19 correct?

20 **A. Yes.**

21 Q. Before we go into the data nexus, is

22 there any way to tell from them -- and we'll use

23 Exhibit 11 as an example -- whether historical

24 calibrations or historical QCs were used?

25 **A. Not in this data, no.**

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1 Q. How would we determine that, or could

2 we?

3 **A. There's a -- in addition, what was**

4 **produced was an Excel file that I believe that**

5 **indicated whether or not historical calibration or**

6 **QC was used.**

7 Q. All right. In -- if we use Exhibit

8 11 as an example, the second page of this exhibit,

9 and I think all of the data packs, has the

10 full-page lab report of the test, correct?

11 **A. Yes.**

12 Q. And for Mr. Shnitzer, on this test,

13 it shows or states that it was positive for cocaine

14 with a level of 325.67 pg/mg, and positive for

15 benzoylecgonine at 60.852 pg/mg, correct?

16 **A. Yes, benzoylecgonine.**

17 Q. I --

18 **A. I know, it's not an easy word.**

19 Q. I try, I try.

20 And on Exhibit 12, the test from

21 September 23rd, 2019, the only positive result is

22 for cocaine, 127.74 pg/mg compared to a cutoff of

23 100 pg/mg; is that right?

24 **A. Yes.**

25 Q. Both of those are under 500 pg/mg,

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1 correct?

2 **A. Yes.**

3 Q. And so if you had used the cutoff set

4 forth in the contract with Massachusetts, these

5 tests would have been negative, correct?

6 MR. CEJAS: I'll object to form.

7 Foundation, assumes facts not in evidence as to the

8 contract.

9 Q. (BY MR. CORNFELD) Go ahead.

10 MR. CEJAS: Subject to that, go

11 ahead.

12 Q. (BY MR. CORNFELD) Go ahead.

13 **A. Yes.**

14 Q. Is it your view that these test

15 results indicate that David Shnitzer was using

16 cocaine?

17 **A. These test results indicate that he**

18 **had cocaine in the hair specimen that we received**

19 **and tested.**

20 Q. That wasn't my question. Does it

21 indicate that he was using cocaine?

22 **A. I don't have enough information to**

23 **answer that question. What -- what the test**

24 **results tell you is that the drug was present.**

25 Q. Under -- under the contract we looked

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| <p>1 at earlier --</p> <p>2 <b>A. Uh-huh.</b></p> <p>3 Q. -- Averhealth was obligated to</p> <p>4 provide an interpretation to Massachusetts of the</p> <p>5 test results, correct?</p> <p>6 <b>A. We provide that service should a</b></p> <p>7 <b>caseworker ask us for information, because we'd</b></p> <p>8 <b>need additional information from -- about the</b></p> <p>9 <b>situation or the circumstance.</b></p> <p>10 Q. All right. The contract didn't say</p> <p>11 that you would provide an interpretation only if</p> <p>12 asked. It said that you would provide an</p> <p>13 interpretation, correct?</p> <p>14 <b>A. It says we provide interpretation</b></p> <p>15 <b>assistance.</b></p> <p>16 Q. Right, but it doesn't say only if</p> <p>17 asked?</p> <p>18 <b>A. I'd need to look to see exactly the</b></p> <p>19 <b>terms in the contract.</b></p> <p>20 Q. Let's look at page -- at Exhibit 3</p> <p>21 again.</p> <p>22 <b>A. Okay.</b></p> <p>23 Q. And do you see -- do you have that?</p> <p>24 <b>A. I do.</b></p> <p>25 Q. Okay. If you would look at</p>  | <p>Page 61</p> <p>1 <b>information.</b></p> <p>2 Q. (BY MR. CORNFELD) That's not in the</p> <p>3 contract that they have to reach out to the</p> <p>4 toxicologist, correct?</p> <p>5 <b>A. It says assist with results</b></p> <p>6 <b>interpretation.</b></p> <p>7 Q. All right. And -- and is there any</p> <p>8 communication that Averhealth made to Massachusetts</p> <p>9 to explain what it means when a result for cocaine</p> <p>10 in hair is 127 or 325 below the cutoff level in the</p> <p>11 contract, but above the cutoff level shown in the</p> <p>12 lab report?</p> <p>13 <b>A. No.</b></p> <p>14 Q. So Massachusetts was supposed to just</p> <p>15 guess about that?</p> <p>16 <b>A. They saw the cutoff that was listed</b></p> <p>17 <b>on the lab report when we brought the hair testing</b></p> <p>18 <b>in-house, and we provided the test results for</b></p> <p>19 <b>that.</b></p> <p>20 Q. And they would just have to guess</p> <p>21 about what that meant, that it was now above a</p> <p>22 lower cutoff?</p> <p>23 MR. CEJAS: Object to form.</p> <p>24 Argumentative.</p> <p>25 Go ahead.</p>  |
| <p>Page 62</p> <p>1 page 81620, Section 8, which we looked at before</p> <p>2 states: The provider shall report all test results</p> <p>3 and related information via the IMS. Specifically,</p> <p>4 the provider shall, and then we skip down to</p> <p>5 subparagraph D, Assist with Result Interpretation.</p> <p>6 Correct?</p> <p>7 <b>A. Uh-huh.</b></p> <p>8 MR. CEJAS: Is that a yes?</p> <p>9 <b>THE WITNESS: Yes, sorry.</b></p> <p>10 MR. CEJAS: You're okay.</p> <p>11 Q. (BY MR. CORNFELD) It doesn't say</p> <p>12 assist with results interpretation if asked or only</p> <p>13 if asked, correct?</p> <p>14 <b>A. Those words if asked are not in</b></p> <p>15 <b>there, no. It says assist with interpretation.</b></p> <p>16 Q. Okay. And is there any way</p> <p>17 Massachusetts would know that they need to ask you</p> <p>18 every time to provide a result interpretation?</p> <p>19 MR. CEJAS: Object to form. Calls</p> <p>20 for speculation.</p> <p>21 Go ahead if you know.</p> <p>22 <b>THE WITNESS: They ask -- they have,</b></p> <p>23 <b>through their training from us, been educated that</b></p> <p>24 <b>should there be questions about test results, that</b></p> <p>25 <b>they can reach out to toxicologists to receive</b></p> | <p>Page 64</p> <p>1 <b>THE WITNESS: I don't believe they</b></p> <p>2 <b>had to guess, no. They knew that if -- if -- for</b></p> <p>3 <b>any of their test results, if they had a question,</b></p> <p>4 <b>to reach out.</b></p> <p>5 Q. (BY MR. CORNFELD) When the -- when</p> <p>6 the Society for Hair Testing said that a cutoff</p> <p>7 should -- should be lower in family cases --</p> <p>8 <b>A. Uh-huh.</b></p> <p>9 Q. -- than the 500 that they said</p> <p>10 indicate use, do you have any idea how much lower</p> <p>11 that is?</p> <p>12 <b>A. I do not.</b></p> <p>13 Q. Whether it could be instead of 500,</p> <p>14 450 or 400 or 350 or anything still above what</p> <p>15 Mr. Shnitzer's levels were?</p> <p>16 <b>A. I do not.</b></p> <p>17 Q. What do you think a cutoff level to</p> <p>18 indicate use in a family case should be compared to</p> <p>19 a nonfamily case?</p> <p>20 <b>A. Setting cocaine at 100 picograms per</b></p> <p>21 <b>milligram is a reasonable cutoff level to</b></p> <p>22 <b>establish.</b></p> <p>23 Q. Not to establish use, but just to</p> <p>24 show that it was there in the sample, correct?</p> <p>25 <b>A. To show that it was positive and that</b></p> |

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| <p style="text-align: right;">Page 65</p> <p>1 the drug was found.</p> <p>2 Q. And that's it, correct?</p> <p>3 A. Yes.</p> <p>4 Q. Did you establish a different cutoff</p> <p>5 level besides 100 for nonfamily cases?</p> <p>6 A. No, our cutoff across the board is at</p> <p>7 100.</p> <p>8 Q. In your test reports?</p> <p>9 A. Correct.</p> <p>10 Q. As opposed to your contracts?</p> <p>11 A. I'd have to -- you obviously showed</p> <p>12 me some MOUs where it was not updated and it still</p> <p>13 listed the higher cutoff.</p> <p>14 Q. All right. And I can tell you of the</p> <p>15 documents that Averhealth produced to us, and I</p> <p>16 told you I searched for the phrase 100 pg/mg and</p> <p>17 didn't find it. So there were no contracts, MOUs,</p> <p>18 proposals, or anything of the like that showed a</p> <p>19 cutoff of cocaine in hair of 100.</p> <p>20 MR. CEJAS: Object to form.</p> <p>21 Q. (BY MR. CORNFELD) Do you have any</p> <p>22 contrary knowledge?</p> <p>23 A. I'd have to go back and review them.</p> <p>24 Are we done with 11 and 12?</p> <p>25 Q. Not yet.</p>  | <p style="text-align: right;">Page 67</p> <p>1 correct?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Mr. Bailey, what was his</p> <p>4 position?</p> <p>5 A. He's now the regional manager. At</p> <p>6 the time, he was either a regional manager or an</p> <p>7 area manager. Oh, it says regional manager. His</p> <p>8 title is on there, so he was regional manager.</p> <p>9 Q. In charge of Massachusetts?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And he says: Good morning,</p> <p>12 Mr. Goldberg. We wanted to let you know that one</p> <p>13 of your clients, D. Shnitzer, e-mailed several</p> <p>14 members of our management team yesterday with</p> <p>15 concerns about his test results.</p> <p>16 We researched his concerns and found</p> <p>17 that information he provided is not accurate. He</p> <p>18 had two positive tests -- two positive hair tests</p> <p>19 about a month apart. Below are his -- are the</p> <p>20 concerns he raised and your findings.</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. And if we could skip down to</p> <p>24 paragraph 4: He indicated that he had a separate</p> <p>25 test completed at another collection location and</p>    |
| <p style="text-align: right;">Page 66</p> <p>1 A. Okay.</p> <p>2 Q. I mean, I'm going to bring you out</p> <p>3 another exhibit, but we'll get back to them.</p> <p>4 A. Okay. Thank you.</p> <p>5 Q. I've handed you what's been marked as</p> <p>6 Exhibit 13. Do you recognize this as an e-mail</p> <p>7 from Joel Bailey to Scott Goldberg dated</p> <p>8 October 17, 2019?</p> <p>9 A. Yes.</p> <p>10 Q. And actually, it's a series of</p> <p>11 e-mails, but in -- Mr. Bailey is an employee of</p> <p>12 Averhealth, or was at the time, correct?</p> <p>13 A. Yes.</p> <p>14 Q. And do you recognize Scott Goldberg</p> <p>15 as the individual with the State of Massachusetts</p> <p>16 who oversaw David Shnitzer's case?</p> <p>17 A. Yes.</p> <p>18 Q. And his title was probation officer.</p> <p>19 It's kind of an odd title because it suggests that</p> <p>20 Mr. Shnitzer was involved in a criminal case, but</p> <p>21 that's just how they -- what the title that</p> <p>22 Massachusetts gives him, even though it wasn't a</p> <p>23 criminal case.</p> <p>24 And you understand that Mr. Shnitzer</p> <p>25 was not involved in a criminal case over drug use,</p> | <p style="text-align: right;">Page 68</p> <p>1 those results were conflicting to the Averhealth</p> <p>2 test, the Averhealth results. The cutoffs from</p> <p>3 ARCpoint -- and you recognize that as the</p> <p>4 laboratory Mr. Shnitzer went to have to his test</p> <p>5 done?</p> <p>6 A. I believe that's just a collection</p> <p>7 site. I don't believe they're a laboratory, but</p> <p>8 yes.</p> <p>9 Q. Okay. And it says: The cutoffs from</p> <p>10 ARCpoint are at 500, and the Averhealth cutoff for</p> <p>11 the same drug is 100 picograms per milligram. The</p> <p>12 levels from our -- from our analysis are above our</p> <p>13 cutoff and below their cutoff, which easily</p> <p>14 explains the discrepancy.</p> <p>15 Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. There is always a possibility to have</p> <p>18 discrepancies between two collection events in any</p> <p>19 event.</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. Why didn't Mr. Bailey tell</p> <p>23 Mr. Goldberg that all this -- all the Averhealth</p> <p>24 results indicated was that it found or claimed to</p> <p>25 find cocaine in Mr. Shnitzer's sample, but that</p> |



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1 more information would be needed to determine  
2 whether that was indicative of drug use?  
3 **A. That was not a question that was**  
4 **being asked.**  
5 Q. Well, Mr. -- Mr. Goldberg didn't ask  
6 any questions. Mr. Bailey's just giving him  
7 information, correct?  
8 **A. Correct. But --**  
9 Q. Providing the -- the assistance in  
10 interpretation that is set forth in the contract  
11 with Massachusetts, correct?  
12 **A. Mr. Bailey indicated that he was**  
13 **answering concerns that were raised by**  
14 **Mr. Shnitzer. And the question that Mr. Shnitzer**  
15 **raised -- let me read this correctly -- is the fact**  
16 **that he had a negative test result from ARCpoint**  
17 **and a positive test result from Averhealth.**  
18 Q. You know, Mr. Shnitzer also said in  
19 his e-mails that he had never used cocaine,  
20 correct?  
21 **A. Yes. That is correct.**  
22 Q. All right. So why didn't Mr. Bailey  
23 answer that concern about whether this test result  
24 indicated that Mr. Shnitzer was not correct when he  
25 said he had never used cocaine?

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1 **A. Mr. Bailey is a regional manager over**  
2 **the operations, he's not a toxicologist.**  
3 Q. Well, couldn't he have consulted a  
4 toxicologist at Averhealth's headquarters or at  
5 Averhealth's lab?  
6 **A. He could have. But that was not the**  
7 **question that was being raised. The question was**  
8 **about the -- the difference in test results. The**  
9 **probation officer could have asked the questions.**  
10 Q. The -- the question that was --  
11 Mr. Shnitzer raised was how can this show that --  
12 show cocaine when I never used cocaine? You  
13 understand that was Mr. Shnitzer's concern?  
14 MR. CEJAS: Object to form.  
15 Foundation, calls for speculation.  
16 Go ahead.  
17 **THE WITNESS: In regular, general**  
18 **practice, our regional managers are not going to**  
19 **answer that question.**  
20 Q. (BY MR. CORNFELD) Okay. But they  
21 could consult with a toxicologist?  
22 **A. They could, yes.**  
23 Q. He didn't, did he?  
24 **A. No.**  
25 Q. So he was not in a position to answer

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1 Mr. Shnitzer's concern, and nobody from Averhealth  
2 has ever answered his concern about how this result  
3 could be when he never used cocaine, correct?  
4 **A. The -- anything about test results,**  
5 **we take that -- our contract is with the State of**  
6 **Massachusetts. And so when it comes to test**  
7 **results and interpretation, those would come from**  
8 **the customer themselves asking the question.**  
9 Q. You mean Massachusetts?  
10 **A. I do mean Massachusetts, yes.**  
11 Q. Okay. You could have answered -- you  
12 could have answered Mr. Shnitzer's concern through  
13 Massachusetts, correct, as -- as you did with  
14 regard to his concern about the two different  
15 apparently conflicting lab results, correct?  
16 **A. Had Mr. Goldberg asked the question,**  
17 **we would have provided that information.**  
18 Q. Mr. Goldberg didn't ask any question,  
19 but you still provided the information about how  
20 you can reconcile those two apparently different  
21 lab results, correct?  
22 **A. I don't understand that question, I**  
23 **apologize, what you're asking.**  
24 Q. Well, you -- you just raised the --  
25 the point that, well, Mr. Goldberg didn't ask how

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1 this result can be if Mr. Shnitzer never used  
2 cocaine. But Mr. Goldberg never asked any  
3 questions, and yet, Mr. Bailey answered the  
4 question about how you can reconcile these two  
5 apparently conflicting lab results.  
6 MR. CEJAS: Object to form.  
7 Q. (BY MR. CORNFELD) That was one of  
8 Mr. Shnitzer's concerns, correct?  
9 MR. CEJAS: Object to form. It's  
10 compound, it assumes facts not in evidence.  
11 Q. (BY MR. CORNFELD) Go ahead.  
12 **A. I -- I'm -- I don't -- I'm -- I still**  
13 **don't understand the question that's in front of**  
14 **me.**  
15 Q. All right. Mr. Shnitzer raised at  
16 least two concerns. One is how -- how you can  
17 reconcile these two lab results, correct?  
18 **A. He raised the fact that one was**  
19 **negative and one was positive, yes.**  
20 Q. Okay. So asking. Okay.  
21 **A. He raised one was negative and one**  
22 **was positive.**  
23 Q. He also said how can this result be  
24 since I never used cocaine. You've already agreed  
25 that that was one of his concerns, correct?



|   |  |
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| <p>1 <b>A. Yes.</b></p> <p>2 Q. All right. He raised those directly</p> <p>3 with Averhealth, correct?</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. Mr. Goldberg never raised either</p> <p>6 concern with Averhealth, did he?</p> <p>7 <b>A. We provided Mr. Shnitzer's --</b></p> <p>8 Q. Excuse me.</p> <p>9 <b>A. -- concerns --</b></p> <p>10 MR. CEJAS: Let -- let her answer --</p> <p>11 MR. CORNFELD: My question is --</p> <p>12 MR. CEJAS: Let her answer.</p> <p>13 Q. (BY MR. CORNFELD) My question is:</p> <p>14 Mr. Goldberg never raised either of those concerns</p> <p>15 with Averhealth, correct?</p> <p>16 <b>A. Mr. Shnitzer raised concerns with us.</b></p> <p>17 <b>We do not talk directly with clients. We provided</b></p> <p>18 <b>his concerns, Mr. Shnitzer's concerns, to</b></p> <p>19 <b>Mr. Goldberg, and provided additional information</b></p> <p>20 <b>to him on why the test results would be between 100</b></p> <p>21 <b>and 500, why you can have a negative and a</b></p> <p>22 <b>positive.</b></p> <p>23 Q. All right. But you didn't -- but you</p> <p>24 said nothing about how his result can be as</p> <p>25 Averhealth reported it when he said he never used</p> | <p>Page 73</p> <p>1 he would answer Mr. Shnitzer's question to</p> <p>2 Mr. Goldberg regarding how to reconcile the two lab</p> <p>3 results and say nothing about how his result could</p> <p>4 have come out the way it did when he never used</p> <p>5 cocaine?</p> <p>6 MR. CEJAS: Object to form. Assumes</p> <p>7 facts not in evidence.</p> <p>8 <b>THE WITNESS: I -- I can't speak on</b></p> <p>9 <b>behalf of Mr. Bailey.</b></p> <p>10 Q. (BY MR. CORNFELD) And you know that</p> <p>11 the court in Massachusetts branded Mr. Shnitzer as</p> <p>12 a drug user based on your test?</p> <p>13 MR. CEJAS: Objection. Assumes facts</p> <p>14 not in evidence, foundation.</p> <p>15 <b>THE WITNESS: I do not know what</b></p> <p>16 <b>Massachusetts did with the test result.</b></p> <p>17 Q. (BY MR. CORNFELD) Do you know that</p> <p>18 he got a reputation in the community as being an</p> <p>19 illegal drug user based on your tests and your</p> <p>20 tests alone?</p> <p>21 MR. CEJAS: Objection. Assumes facts</p> <p>22 not in evidence, foundation.</p> <p>23 Subject to that.</p> <p>24 <b>THE WITNESS: I do not know what</b></p> <p>25 <b>happened in the community in Massachusetts.</b></p> <p>Page 75</p> |
| <p>1 cocaine, correct?</p> <p>2 <b>A. Correct.</b></p> <p>3 Q. That was part of the assistance set</p> <p>4 forth in your contract with Massachusetts that you</p> <p>5 did not provide, correct?</p> <p>6 <b>A. No, that is not correct.</b></p> <p>7 Q. You didn't -- you did not provide</p> <p>8 assistance on answering Mr. Shnitzer's concern</p> <p>9 about how he could have had this result when he</p> <p>10 never used cocaine, correct?</p> <p>11 <b>A. Mr. Goldberg never asked the</b></p> <p>12 <b>question.</b></p> <p>13 Q. Mr. Shnitzer asked the question.</p> <p>14 <b>A. Mr. Goldberg never asked the</b></p> <p>15 <b>question.</b></p> <p>16 Q. Excuse me. Mr. Shnitzer asked that</p> <p>17 question, correct?</p> <p>18 <b>A. Yes. We've established that, but</b></p> <p>19 <b>Mr. Goldberg --</b></p> <p>20 Q. Okay.</p> <p>21 <b>A. Our -- our contract is that we answer</b></p> <p>22 <b>questions from probation officers, not directly</b></p> <p>23 <b>from clients. Had Mr. Goldberg asked the question,</b></p> <p>24 <b>we would have answered it.</b></p> <p>25 Q. Yet -- how did Mr. Bailey decide that</p> <p>Page 74</p>  | <p>1 Q. (BY MR. CORNFELD) If -- if you knew</p> <p>2 that, and I'll ask you to assume that, do you feel</p> <p>3 any responsibility for that, for not having told</p> <p>4 them what the test result really means?</p> <p>5 <b>A. We provide the test results and</b></p> <p>6 <b>provide interpretation when asked.</b></p> <p>7 Q. When asked by -- not when asked by</p> <p>8 Mr. Shnitzer, even through the -- through the</p> <p>9 Massachusetts official, Mr. Goldberg, correct?</p> <p>10 <b>A. Can you rephrase that? I don't</b></p> <p>11 <b>understand the question.</b></p> <p>12 Q. Well, I think you've answered it.</p> <p>13 <b>A. Okay.</b></p> <p>14 Q. And you know Mr. Shnitzer lost</p> <p>15 unsupervised contact with his children based only</p> <p>16 on your test results?</p> <p>17 MR. CEJAS: Object to form. Assumes</p> <p>18 facts not in evidence and lacks foundation.</p> <p>19 Subject to that, go ahead.</p> <p>20 <b>THE WITNESS: I'm not aware of what</b></p> <p>21 <b>caused him to lose supervised visitation with his</b></p> <p>22 <b>children.</b></p> <p>23 Q. (BY MR. CORNFELD) You read the</p> <p>24 Complaint, correct?</p> <p>25 <b>A. Yes.</b></p> <p>Page 76</p>                       |

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1 Q. And it was in the Complaint, correct?

2 **A. I have not seen the facts to know**

3 **that that's the only reason why.**

4 Q. Okay. Well, I'd like you to assume

5 that. Do you feel any responsibility for that,

6 without providing assistance to Massachusetts to

7 explain what your test really means and doesn't

8 mean?

9 MR. CEJAS: Object to form.

10 Foundation, assumes facts not in evidence.

11 **THE WITNESS: We provide test results**

12 **to our customers. We provide interpretation when**

13 **asked. And they're the ones that look at the**

14 **information and make determinations on it.**

15 Q. (BY MR. CORNFELD) Do you feel any

16 responsibility for the fact that Mr. Bailey did not

17 answer to Mr. Goldberg about Mr. Shnitzer's

18 concern, that his test results showed up positive

19 when he said he never used cocaine?

20 MR. CEJAS: Object to form.

21 Q. (BY MR. CORNFELD) Do you feel any

22 responsibility that the -- that as a result of

23 that, and because of your test results,

24 Mr. Shnitzer lost unsupervised contact with his two

25 little daughters?

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1 MR. CEJAS: Object to form. Assumes

2 facts not in evidence, lacks foundation, the

3 question's compound, and it's asked and answered at

4 this point.

5 MR. CORNFELD: You know what, you can

6 just say objection to form. I'll stipulate that

7 your objection to form will cover any objection you

8 later come up with.

9 MR. CEJAS: I'm going to follow the

10 federal rules that's required to give bare bones --

11 MR. CORNFELD: Not if I stip- -- not

12 if I stipulate -- I could stipulate that you don't

13 even need to make a objection and all objections

14 are preserved.

15 MR. CEJAS: Well, I'll --

16 MR. CORNFELD: But I will allow you

17 to say objection to form.

18 Q. (BY MR. CORNFELD) Go ahead.

19 MR. CEJAS: I'm not going to

20 stipulate to that.

21 Q. (BY MR. CORNFELD) Go ahead.

22 MR. CORNFELD: You don't have to --

23 excuse me. You don't have to stipulate. I made a

24 one-way stipulation. Your objection to form will

25 cover any possible objection to form, you're just

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1 wasting time by rattling off everything you can

2 possibly think of, and -- and if we don't finish by

3 the deadline, that will be the reason.

4 Q. (BY MR. CORNFELD) Go ahead.

5 **A. We provide our test results back to**

6 **our customers, they have many other information in**

7 **addition to our test results and make**

8 **determinations on how they choose to proceed.**

9 Q. Can you read back the question that

10 was pending?

11 MR. CEJAS: It was a yes or no.

12 MR. CORNFELD: Yeah.

13 (A discussion was held off the

14 record.)

15 (The preceding question was read

16 back.)

17 MR. CEJAS: Same objections to the

18 form.

19 **THE WITNESS: The test results showed**

20 **that there was cocaine in there. Whether or not he**

21 **used cocaine -- just because he said that, we often**

22 **see many individuals indicate that they've never**

23 **used a drug and they actually have.**

24 Q. (BY MR. CORNFELD) And you could have

25 explained that, or you could have explained that --

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1 what the test result means, that it just means that

2 cocaine was in there and that was it.

3 But my question was: Do you feel any

4 responsibility for the fact that based on your

5 test -- and I'm asking you to assume this -- based

6 on your test and your tests alone, Mr. Shnitzer

7 lost unsupervised contact with his two little

8 daughters?

9 MR. CEJAS: Same objections.

10 **THE WITNESS: Again, I don't know**

11 **that that's the case why my test result and my test**

12 **result alone are why he lost supervision.**

13 Q. (BY MR. CORNFELD) I'm asking you to

14 assume that that was the case. We'll prove it.

15 I'm asking you to assume it. Do you feel any

16 responsibility for that?

17 MR. CEJAS: Same objections.

18 **THE WITNESS: No.**

19 Q. (BY MR. CORNFELD) Okay. Let's look

20 at Exhibit 12, the Shnitzer data pack for the test

21 that was collected on September 23, 2019.

22 Actually, let's look at -- let's look at page --

23 Exhibit 11.

24 **A. Okay.**

25 Q. Which is the test from August of 2019

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| <p style="text-align: right;">Page 81</p> <p>1 on Mr. Shnitzer. And if you would look at page --</p> <p>2 it may be cut off on the -- by the staple, but it</p> <p>3 is 6226, and it's titled Cocaine Cal Curve.</p> <p>4 What does this page show?</p> <p>5 <b>A. It shows the points on the</b></p> <p>6 <b>calibration curve.</b></p> <p>7 Q. The calibration curve for cocaine?</p> <p>8 <b>A. Correct.</b></p> <p>9 Q. And are those the -- the -- are you</p> <p>10 referring to the two slightly curved lines in the</p> <p>11 middle of that table, the middle of that chart?</p> <p>12 <b>A. When you say slightly curved lines,</b></p> <p>13 <b>these lines here in the middle? That what you're</b></p> <p>14 <b>talking about?</b></p> <p>15 Q. Yeah, the lines in the -- in the</p> <p>16 middle that are under the heading Calibration for</p> <p>17 Cocaine.</p> <p>18 Is that right?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. All right. Why are there two curves?</p> <p>21 <b>A. There's transition one and transition</b></p> <p>22 <b>two.</b></p> <p>23 Q. Can you explain what that means?</p> <p>24 <b>A. You're going to -- I'm not a</b></p> <p>25 <b>toxicologist, so you're going to start to get over</b></p>   | <p style="text-align: right;">Page 83</p> <p>1 witness who could testify about these topics.</p> <p>2 <b>A. Understood.</b></p> <p>3 Q. And you got nominated. I don't know</p> <p>4 why. It wasn't our decision, so that's why I'm</p> <p>5 asking you. Okay?</p> <p>6 Let me -- let me ask you: There's a</p> <p>7 table above the -- those calibration curves --</p> <p>8 <b>A. Uh-huh.</b></p> <p>9 Q. -- that has headings like index,</p> <p>10 sample name, sample type, and so forth.</p> <p>11 Do you see that?</p> <p>12 <b>A. Uh-huh.</b></p> <p>13 Q. Yes?</p> <p>14 <b>A. Yes. Sorry, yes.</b></p> <p>15 Q. Are you familiar with what those</p> <p>16 items are?</p> <p>17 <b>A. Yes. The sample name's going to be</b></p> <p>18 <b>the accession number for the individual specimen.</b></p> <p>19 Q. Okay. What -- what is meant by</p> <p>20 index?</p> <p>21 <b>A. I'm not sure.</b></p> <p>22 Q. All right. What is meant by sample</p> <p>23 type? It says unknown for all of that, for going</p> <p>24 down the column.</p> <p>25 <b>A. Unknowns typically are the actual</b></p>   |
| <p style="text-align: right;">Page 82</p> <p>1 <b>my expertise to interpret test results, and really,</b></p> <p>2 <b>for the best thing to walk through this</b></p> <p>3 <b>interpretation would be a toxicologist.</b></p> <p>4 Q. You're referring to Dr. Glinn --</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. -- for example?</p> <p>7 All right. But you're the person</p> <p>8 that Averhealth put up to talk about the data</p> <p>9 packs, so that's why I'm asking you.</p> <p>10 <b>A. Okay.</b></p> <p>11 Q. What -- what do you understand the</p> <p>12 reason is why there are two curves?</p> <p>13 <b>A. There's two transitions. So in any</b></p> <p>14 <b>drug test, there's transition one and transition</b></p> <p>15 <b>two.</b></p> <p>16 Q. Okay. And what is -- what is meant</p> <p>17 by transition one and transition two?</p> <p>18 <b>A. It's starting to get outside of my</b></p> <p>19 <b>expertise. I'm not comfortable answering the</b></p> <p>20 <b>question. I know you put me up as the expert. I'm</b></p> <p>21 <b>not a toxicologist, so when it comes to specific</b></p> <p>22 <b>results interpretation...</b></p> <p>23 Q. All right. I -- I didn't put you up.</p> <p>24 <b>A. Okay.</b></p> <p>25 Q. We asked Averhealth to designate a</p> | <p style="text-align: right;">Page 84</p> <p>1 <b>patient's specimen. So that's why there's the</b></p> <p>2 <b>accession numbers. So the accession number is the</b></p> <p>3 <b>individual one saying that it's an unknown. So you</b></p> <p>4 <b>have your calibrators, your controls, and then your</b></p> <p>5 <b>unknowns.</b></p> <p>6 Q. Okay. And then there's a column ACQ</p> <p>7 method name, and that says hair something?</p> <p>8 <b>A. Uh-huh.</b></p> <p>9 Q. What's the something, hair -- can you</p> <p>10 read it?</p> <p>11 <b>A. I think it's .dam.</b></p> <p>12 Q. I'm sorry?</p> <p>13 <b>A. I believe it's .dram, D -- dam,</b></p> <p>14 <b>hair.dam.</b></p> <p>15 Q. What -- what does -- what is meant by</p> <p>16 that?</p> <p>17 <b>A. It's the acquisition method name. So</b></p> <p>18 <b>it's the name of the method that's used to test the</b></p> <p>19 <b>specimens. So we have very many different methods</b></p> <p>20 <b>that we use. So for example, for -- we have our</b></p> <p>21 <b>hair test method that we inject the specimen and it</b></p> <p>22 <b>goes through and it looks for -- it's a validated</b></p> <p>23 <b>method for hair. So each method has its own name.</b></p> <p>24 Q. All right. Then there's -- the next</p> <p>25 column is the component name, and there's cocaine</p> |

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| <p>1 one and cocaine two.</p> <p>2 Do you see that?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. What is meant by cocaine one and</p> <p>5 cocaine two?</p> <p>6 <b>A. That's your transition one and your</b></p> <p>7 <b>transition two.</b></p> <p>8 Q. All right. The next column is I-S</p> <p>9 name, and it says benzoylecgonine?</p> <p>10 <b>A. Benzoylecgonine, yes.</b></p> <p>11 Q. All right. What is meant by I-S</p> <p>12 name?</p> <p>13 <b>A. The internal standard.</b></p> <p>14 Q. The internal standard that was used</p> <p>15 in the test?</p> <p>16 <b>A. Correct.</b></p> <p>17 Q. The next column calculated --</p> <p>18 <b>A. Concentration.</b></p> <p>19 Q. -- concentration?</p> <p>20 <b>A. Uh-huh.</b></p> <p>21 Q. And that's the concentration of what?</p> <p>22 <b>A. The quantitative value of the amount</b></p> <p>23 <b>of that particular drug that was found in the</b></p> <p>24 <b>specimen.</b></p> <p>25 Q. All right. I note that there's one</p>   | <p>1 <b>being the -- the -- the sequence number of which --</b></p> <p>2 <b>that -- that it sits, then you can see, so each of</b></p> <p>3 <b>these specimens are the same specimen that's</b></p> <p>4 <b>injected, and when it's tested, you look for</b></p> <p>5 <b>transition one and transition two.</b></p> <p>6 Q. All right. Under sample name, those</p> <p>7 are the accession numbers?</p> <p>8 <b>A. Yes, they are.</b></p> <p>9 Q. There's none -- none of those match</p> <p>10 the accession number of this test.</p> <p>11 <b>A. They do. 08508406.</b></p> <p>12 Q. But --</p> <p>13 <b>A. This one that's highlighted matches.</b></p> <p>14 <b>So we highlighted what was his transition one of</b></p> <p>15 <b>his specimen.</b></p> <p>16 Q. But on the cover page, the accession</p> <p>17 number of the test ends in 017.</p> <p>18 <b>A. So this is the root number, so when</b></p> <p>19 <b>you look at our specimen numbers, this number</b></p> <p>20 <b>matches --</b></p> <p>21 Q. You mean all the numbers before the</p> <p>22 dash?</p> <p>23 <b>A. Correct.</b></p> <p>24 Q. What are the three digits after the</p> <p>25 dash mean?</p>  |
| <p>1 row that's highlighted in this table on cocaine cal</p> <p>2 curve page. What -- why is there one row that's</p> <p>3 highlighted?</p> <p>4 <b>A. I believe it's just a matter of when</b></p> <p>5 <b>pulling up the data that it's -- that it's</b></p> <p>6 <b>highlighted. That's your transition one. So</b></p> <p>7 <b>transition is highlighted versus transition two.</b></p> <p>8 Q. Well, there are several cocaine ones,</p> <p>9 and only one of them is highlighted.</p> <p>10 <b>A. Well, they're different accession</b></p> <p>11 <b>numbers. So if you look at here -- so if you look</b></p> <p>12 <b>at the one that indexes 1338, that accession number</b></p> <p>13 <b>has two. So 1338 and 1339 is the same accession</b></p> <p>14 <b>number, so it's that same 08571391-225. Okay? So</b></p> <p>15 <b>that is -- that's this -- that is a specimen that</b></p> <p>16 <b>we test for, the first transition and the second</b></p> <p>17 <b>transition.</b></p> <p>18 <b>Then the -- the next two numbers down</b></p> <p>19 <b>are, again, a different accession number, so a</b></p> <p>20 <b>different specimen. So we're showing the two</b></p> <p>21 <b>preceding specimens prior to Mr. Shnitzer's</b></p> <p>22 <b>specimen. So you can see both of those, you see</b></p> <p>23 <b>both transition one and transition two.</b></p> <p>24 <b>And then you get to Shnitzer's, and</b></p> <p>25 <b>so the -- on the actual analyzer, right, and index</b></p> | <p>1 <b>A. After the dash, once they get to the</b></p> <p>2 <b>laboratory, we have specimens that are -- it gets</b></p> <p>3 <b>assigned a dash to -- as, like, the primary test</b></p> <p>4 <b>number, and then when it goes onto the analyzer, it</b></p> <p>5 <b>gets the number that's specific to that batch. So</b></p> <p>6 <b>this one that ends in 215, is the confirmation</b></p> <p>7 <b>accession number that was assigned along with the</b></p> <p>8 <b>specimen.</b></p> <p>9 Q. Okay. But -- but on the --</p> <p>10 <b>A. You just have to look at the root.</b></p> <p>11 Q. On the -- on the cover page, the</p> <p>12 numbers after the dash are 017. What --</p> <p>13 <b>A. Yeah, that's just its primary number,</b></p> <p>14 <b>right, so when it gets to the specimen, it goes</b></p> <p>15 <b>into a batch to create a batch of specimens. And</b></p> <p>16 <b>at that point in time, it gets -- it gets assigned</b></p> <p>17 <b>as 017.</b></p> <p>18 <b>And then it goes into a -- it's</b></p> <p>19 <b>prepped into a confirmation batch, and when it's</b></p> <p>20 <b>prepped into that confirmation batch, it gets a</b></p> <p>21 <b>confirmation batch specific number. And so that's</b></p> <p>22 <b>the one that's dash 215. So really, the specimen</b></p> <p>23 <b>itself is what's -- precedes the -- the dash.</b></p> <p>24 Q. All right. So if we looked under</p> <p>25 the -- in the calculated concentration column, it</p> |

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| <p>Page 89</p> <p>1 looks like, although it's not perhaps as legible as</p> <p>2 it could be, but the highlighted number looks like</p> <p>3 it matches what is in the --</p> <p>4 <b>A. The 325.67.</b></p> <p>5 Q. -- the positive result that you --</p> <p>6 <b>A. It's in transition one.</b></p> <p>7 Q. Okay.</p> <p>8 <b>A. Correct.</b></p> <p>9 Q. What does the column headed Actual</p> <p>10 Concentration mean? It says NA in every cell under</p> <p>11 that.</p> <p>12 <b>A. I'm not sure what those three are:</b></p> <p>13 <b>The actual concentration, the accuracy, or the</b></p> <p>14 <b>concentration ratio.</b></p> <p>15 Q. When they all say NA, does that mean</p> <p>16 not applicable?</p> <p>17 <b>A. Correct.</b></p> <p>18 Q. And then the next column area, what</p> <p>19 is -- what does that mean?</p> <p>20 <b>A. The area of the peak.</b></p> <p>21 Q. In the -- in the -- in the</p> <p>22 chromatogram that's on the bottom?</p> <p>23 <b>A. Mr. Shnitzer's, uh-huh.</b></p> <p>24 Q. Yes?</p> <p>25 <b>A. Yes.</b></p>  | <p>Page 91</p> <p>1 <b>A. Again, I'm not a toxicologist, so</b></p> <p>2 <b>you're starting to get outside of my expertise.</b></p> <p>3 Q. Have you ever heard the term Gaussian</p> <p>4 referred to a chromatogram?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. What do you understand that is?</p> <p>7 <b>A. I've heard the term, what I</b></p> <p>8 <b>understand it to be. I don't have the expertise to</b></p> <p>9 <b>talk about it.</b></p> <p>10 Q. All right. Then there's a column</p> <p>11 for -- go back up to the table, the top of the</p> <p>12 cocaine cal curve page, and Mr. Shnitzer's data</p> <p>13 pack from August of 2019, there's a column called</p> <p>14 area ratio. What is that?</p> <p>15 <b>A. I don't know.</b></p> <p>16 Q. There's a column called -- well, the</p> <p>17 next column -- I'm not sure I can read it. Can you</p> <p>18 read that?</p> <p>19 MR. PLEBAN: Baseline. Baseline.</p> <p>20 <b>THE WITNESS: I don't think the</b></p> <p>21 <b>height. Is that the one you're talking about?</b></p> <p>22 Q. (BY MR. CORNFELD) Delta/height?</p> <p>23 MR. PLEBAN: Baseline.</p> <p>24 Q. (BY MR. CORNFELD) And then there's a</p> <p>25 word above that.</p> |
| <p>Page 90</p> <p>1 Q. So the -- your two curves on the</p> <p>2 bottom, one highlighted and one not highlighted.</p> <p>3 <b>A. That's your transition one and your</b></p> <p>4 <b>transition two.</b></p> <p>5 Q. And those curves are the</p> <p>6 chromatograms of his sample?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. And area is the area under the curve?</p> <p>9 <b>A. The area is the area -- the whole</b></p> <p>10 <b>area of the peak.</b></p> <p>11 Q. Okay. The -- the part of the curve</p> <p>12 that's under the peak?</p> <p>13 <b>A. To make sure I understand what you're</b></p> <p>14 <b>saying, it would be the area of this, yes.</b></p> <p>15 Q. Okay. From where it goes from the</p> <p>16 baseline up to the peak and then down to the</p> <p>17 baseline?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. And that curve is -- the shape of</p> <p>20 that curve can be called Gaussian, correct?</p> <p>21 <b>A. Can be called, pardon?</b></p> <p>22 Q. Gaussian, G-A-U-S-S-I-A-N.</p> <p>23 <b>A. I'm not sure.</b></p> <p>24 Q. Have you ever heard of the term</p> <p>25 Gaussian referred to a chromatogram?</p> | <p>Page 92</p> <p>1 <b>A. Baseline delta to height.</b></p> <p>2 Q. Okay. What is -- what is shown in</p> <p>3 that column?</p> <p>4 <b>A. It's the difference between, I</b></p> <p>5 <b>believe, the -- the baseline and the height.</b></p> <p>6 Q. Okay. And the next column, what does</p> <p>7 that say?</p> <p>8 <b>A. It says used.</b></p> <p>9 Q. Used?</p> <p>10 <b>A. Uh-huh.</b></p> <p>11 Q. What is meant in that column, shown</p> <p>12 in that column?</p> <p>13 <b>A. I'm not sure.</b></p> <p>14 Q. The next column is headed Ion Ratio?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. What is shown in that column?</p> <p>17 <b>A. It's -- it shows, I think, the amount</b></p> <p>18 <b>of the ion ratio.</b></p> <p>19 Q. What is the ion ratio?</p> <p>20 <b>A. I'm not comfortable answering these</b></p> <p>21 <b>questions.</b></p> <p>22 Q. There's a column headed Expected Ion</p> <p>23 Ratio.</p> <p>24 <b>A. Uh-huh.</b></p> <p>25 Q. What is shown in that column?</p>   |



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| <p>1 <b>A. I think it shows 1.0000.</b></p> <p>2 Q. But what -- what -- what does that</p> <p>3 represent?</p> <p>4 <b>A. Similarly, not comfortable answering</b></p> <p>5 <b>the questions.</b></p> <p>6 MR. CORNFELD: Counsel, I think we're</p> <p>7 going to need another 30(b)(6) witness.</p> <p>8 MR. CEJAS: On the specifics?</p> <p>9 MR. CORNFELD: On these -- yeah, on</p> <p>10 the things that Ms. Delagnes is unable to answer.</p> <p>11 MR. CEJAS: On the interpretation of</p> <p>12 the data?</p> <p>13 MR. CORNFELD: Yeah, yeah.</p> <p>14 MR. PLEBAN: You marked on one of</p> <p>15 those exhibits, maybe on the front of that, with</p> <p>16 that little dash.</p> <p>17 <b>THE WITNESS: Oh, I just was trying</b></p> <p>18 <b>to visualize the fact that this actual specimen</b></p> <p>19 <b>itself is the first eight numbers, and then there's</b></p> <p>20 <b>a dash, and those are kind of secondary subnumbers</b></p> <p>21 <b>that tie back to this.</b></p> <p>22 MR. PLEBAN: We just need to note,</p> <p>23 like, put on the record where you marked so we</p> <p>24 don't think it's the original.</p> <p>25 <b>THE WITNESS: I boxed --</b></p>   | <p>1 number, collection date December 13, 2021.</p> <p>2 Do you see that?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. And this is the data pack for the</p> <p>5 tests -- the test that was positive for Katarzyna</p> <p>6 Foulger for her sample that was collected on</p> <p>7 December 13, 2021, correct?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. And do you understand this was the</p> <p>10 only test that Averhealth reported that was</p> <p>11 positive -- or the only sample that Averhealth</p> <p>12 reported that was positive?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. If we could look at the page titled</p> <p>15 Full Page Lab Report --</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. -- which is the second page on the</p> <p>18 sample. And do you see that it shows that -- or</p> <p>19 states that this was positive for cocaine in a hair</p> <p>20 sample?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. And the cutoff is 100 pg/mg, correct?</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. There's no level reported. Do you</p> <p>25 see that?</p>   |
| <p>1 MR. CEJAS: So that the record --</p> <p>2 MR. CORNFELD: Wait --</p> <p>3 <b>THE WITNESS: -- the first nine.</b></p> <p>4 Q. (BY MR. CORNFELD) Before you say</p> <p>5 that, the record you are holding up is Exhibit 11,</p> <p>6 correct?</p> <p>7 <b>A. Yes, it is.</b></p> <p>8 Q. Okay. And you made some markings on</p> <p>9 the cover page of Exhibit 11. You underlined a</p> <p>10 portion of the accession number, correct?</p> <p>11 <b>A. I boxed the root accession number.</b></p> <p>12 Q. Okay. And those -- that's your --</p> <p>13 <b>A. And that's what we call it, we call</b></p> <p>14 <b>it a root accession number. So I boxed the root</b></p> <p>15 <b>accession number to show for his sample, it is</b></p> <p>16 <b>always going to be those first eight numbers. And</b></p> <p>17 <b>then there's a dash, and there's three digits after</b></p> <p>18 <b>that depending upon the various stages within</b></p> <p>19 <b>testing procedures, those -- those last three</b></p> <p>20 <b>numbers may change. That's what I was indicating.</b></p> <p>21 <b>Thank you.</b></p> <p>22 Q. Ms. Delagnes, I've handed you what's</p> <p>23 been marked as Exhibit 14, which is a document</p> <p>24 numbered 7836 on the first page titled: Foulger</p> <p>25 data pack accession number, and then there's a long</p> | <p>1 <b>A. Yes.</b></p> <p>2 Q. It says NA under level?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. Why is that?</p> <p>5 <b>A. This particular customer probably</b></p> <p>6 <b>does not have levels turned on. So when the full</b></p> <p>7 <b>page report is pulled out of the database, it</b></p> <p>8 <b>doesn't reflect the levels.</b></p> <p>9 Q. The customer turns on something in</p> <p>10 your system?</p> <p>11 <b>A. Yes. They have an opportunity to</b></p> <p>12 <b>either have levels reported or not.</b></p> <p>13 Q. So as far as we can tell from this</p> <p>14 report, her -- her result could have been under 500</p> <p>15 for cocaine, correct?</p> <p>16 <b>A. What I can tell from this report is</b></p> <p>17 <b>it would have been above 100.</b></p> <p>18 Q. But you have no idea how far or how</p> <p>19 little?</p> <p>20 <b>A. Not on this -- not on this lab</b></p> <p>21 <b>report, no.</b></p> <p>22 Q. Is that data available anywhere?</p> <p>23 <b>A. Yes, it would be on the</b></p> <p>24 <b>chromatograph.</b></p> <p>25 Q. Are you referring to the page headed</p> |

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|---|---|
| <p>1 Drug Cal Curve that is page numbered 7842?</p> <p>2 <b>A. Give me a minute. This one's</b></p> <p>3 <b>Dr. Glinn needs to look at.</b></p> <p>4 Q. I'm sorry? What -- what --</p> <p>5 <b>A. I said this one Dr. Glinn will need</b></p> <p>6 <b>to look at with all the charts in here to show</b></p> <p>7 <b>where the actual value of the concentration is.</b></p> <p>8 Q. Would that -- and do you see that</p> <p>9 Ms. Foulger's benzoylecgonine was negative?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. Do you have an understanding as to</p> <p>12 whether a positive cocaine in hair with a negative</p> <p>13 benzoylecgonine would indicate the absence of drug</p> <p>14 use?</p> <p>15 <b>A. That's a question for a toxicologist.</b></p> <p>16 Q. If we go through Ms. Foulger's lab</p> <p>17 report --</p> <p>18 <b>A. Uh-huh.</b></p> <p>19 Q. -- there's a section that is -- that</p> <p>20 starts on page 1 of 68 or Bates number 7843, and a</p> <p>21 table that begins on 7844.</p> <p>22 Do you see that?</p> <p>23 <b>A. I do.</b></p> <p>24 Q. And there's a column entitled Percent</p> <p>25 Accuracy.</p> | <p>1 anyone from Massachusetts tell you that they wanted</p> <p>2 cutoffs that were the lowest possible level that</p> <p>3 Averhealth could detect?</p> <p>4 <b>A. It's a vague question. I'd -- I'd</b></p> <p>5 <b>have to look into that further.</b></p> <p>6 Q. But you're not aware of it as you sit</p> <p>7 here?</p> <p>8 <b>A. I'm not aware of it as I sit here,</b></p> <p>9 <b>no.</b></p> <p>10 Q. All right. I'll -- we'll leave the</p> <p>11 record open and you can -- if there's a document or</p> <p>12 a memo or something, I'd ask that you provide it to</p> <p>13 your counsel and they can provide it to us, and we</p> <p>14 can decide whether we need to ask you about it.</p> <p>15 <b>A. Okay.</b></p> <p>16 <b>THE WITNESS: Do I need to take a</b></p> <p>17 <b>note for follow-ups?</b></p> <p>18 Q. (BY MR. CORNFELD) And are there</p> <p>19 documents that --</p> <p>20 <b>A. Sorry, I can't wear my reading</b></p> <p>21 <b>glasses and look at you.</b></p> <p>22 Q. Are -- you need -- you need bifocals.</p> <p>23 <b>A. Yeah.</b></p> <p>24 Q. Are there -- are there documents</p> <p>25 regarding Averhealth's procedures for changing</p>   |
| <p>1 <b>A. Yes.</b></p> <p>2 Q. Are you familiar with what's shown in</p> <p>3 the column?</p> <p>4 <b>A. I am. I mean, I can read the</b></p> <p>5 <b>numbers, yes.</b></p> <p>6 Q. Are you familiar with what they</p> <p>7 represent?</p> <p>8 <b>A. A toxicologist needs to get into</b></p> <p>9 <b>details about these numbers.</b></p> <p>10 Q. Would that be true for the rest of</p> <p>11 the tables in the Foulger data pack and the other</p> <p>12 data packs?</p> <p>13 <b>A. Yes.</b></p> <p>14 MR. CEJAS: I would say whenever</p> <p>15 you're ready to change topics, it would probably be</p> <p>16 a good time for a break, so it's up to you,</p> <p>17 whenever you're ready.</p> <p>18 MR. CORNFELD: I was thinking the</p> <p>19 same thing.</p> <p>20 THE VIDEOGRAPHER: The time is 11:35.</p> <p>21 We are off the record.</p> <p>22 (A short break was taken.)</p> <p>23 THE VIDEOGRAPHER: The time is 11:51.</p> <p>24 We are back on the record.</p> <p>25 Q. (BY MR. CORNFELD) Ms. Delagnes, did</p>  | <p>1 cutoffs?</p> <p>2 <b>A. Not that I'm aware of.</b></p> <p>3 Q. I think I asked you this, but are</p> <p>4 there documents regarding Averhealth's change in</p> <p>5 the cutoff for cocaine in hair from 500 to 100?</p> <p>6 <b>A. You asked if we provided</b></p> <p>7 <b>communication out to our customers about the cutoff</b></p> <p>8 <b>change, and I -- I -- I indicated I don't believe</b></p> <p>9 <b>so. So those are two follow-ups that I have.</b></p> <p>10 <b>Document used for lowest cutoff and did we document</b></p> <p>11 <b>or send out a change in cutoffs.</b></p> <p>12 Q. Are there -- are there internal</p> <p>13 documents within Averhealth on the change in the</p> <p>14 cutoff for hair for cocaine in hair from 500 to</p> <p>15 100?</p> <p>16 <b>A. We would have changed -- in our</b></p> <p>17 <b>database, we would have made changes, right, to</b></p> <p>18 <b>bring that test in-house and to set the cutoffs,</b></p> <p>19 <b>and there is an SOP of what our hair testing is and</b></p> <p>20 <b>there would be documentation on what we determined</b></p> <p>21 <b>would be the cutoffs of that.</b></p> <p>22 Q. All right. I've -- as I said, I've</p> <p>23 not seen documentation regarding the change in</p> <p>24 cutoff because I --</p> <p>25 <b>A. Okay.</b></p> |

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1 Q. -- searched for 100 pg/mg.

2 A. Uh-huh.

3 Q. So I would ask that if there is such

4 documentation, you provide that to your counsel so

5 they can provide it to us and we can decide whether

6 we need to ask about that.

7 A. Okay.

8 MR. CORNFELD: Tammie, would you mark

9 that portion of the transcript where I made those

10 requests?

11 Q. (BY MR. CORNFELD) You have in front

12 of you Exhibit 15, which bears the number 2239 on

13 the first page and is titled Judicial Branch of

14 Arizona in Maricopa County, Contract Drug and

15 Alcohol Testing, Urinalysis Services 190161-RFP.

16 Do you see that?

17 A. Yes.

18 Q. Is this the contract that governed

19 the test on -- on Katza [as pronounced] Foulger

20 that we've been looking at?

21 A. Yes.

22 Q. If you would look at page 5, the page

23 with the Bates number 2265. Do you see that

24 there's a section of this contract titled --

25 A. 5? I have 2243, 5-5.

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1 Q. Maybe you don't have the same Bates

2 number document.

3 A. Sorry, this has page number 5, but

4 it's -- is there another 5 maybe in the -- I'll

5 just look for the Bates number.

6 Q. Yeah.

7 A. What's the Bates number? 22?

8 Q. 2265.

9 A. Okay. Thank you.

10 Q. Did I staple two copies together?

11 A. Oh, there's two. It must be two

12 different sections of the document. Okay. I'm on

13 the right one now.

14 Q. If you look at the page with the

15 Bates number 2261.

16 A. 2261? Okay.

17 Q. Do you see that this is Exhibit B,

18 Scope of Work?

19 A. Okay.

20 Q. And they start the page numbering

21 over again with page 1, so page 5 following that,

22 within Exhibit B, the page with the Bates number

23 2265 has Section 6, Laboratory Requirements.

24 A. Uh-huh.

25 Q. Yes?

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1 A. Yes.

2 Q. And it states: Drug testing

3 laboratory shall, and if you skip down to

4 subparagraph J, it says: Provide the Court with

5 drug testing data as requested and any explanation

6 of test results and laboratory policy and

7 procedure.

8 Do you see that?

9 A. Yes.

10 Q. Did you provide any explanation of

11 Ms. Foulger's test results to Maricopa County?

12 A. I'm not aware that they asked of any,

13 so no, we did not.

14 Q. Well, it doesn't say provide -- oh,

15 it says as requested, and you provide drug testing

16 data as requested and any explanation of test

17 results.

18 And that doesn't say as requested for

19 the explanation, correct?

20 MR. CEJAS: Object to form. Object

21 to form.

22 THE WITNESS: The words of "as

23 requested" are not in there, no.

24 It is standard practice, though, we

25 don't with -- every test result, not just

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1 Averhealth, but any laboratory, as they report test

2 results, they respond to questions about those

3 results.

4 Q. (BY MR. CORNFELD) Did you provide

5 any explanation to Maricopa County regarding what

6 it means to have a positive cocaine in hair but a

7 negative benzoylecgonine?

8 A. No.

9 Q. And do you have any idea whether

10 Maricopa County would -- or strike that.

11 Do you have any reason to think that

12 Maricopa County, without any explanation from

13 Averhealth, would have any idea what it means to

14 have a positive cocaine and negative

15 benzoylecgonine in hair?

16 MR. CEJAS: Object to form.

17 Speculation.

18 THE WITNESS: The agency requesting

19 this testing has been doing it for a long time and

20 is very well versed. So I -- I can't -- I can't

21 respond to that one way or another. I don't know

22 what Maricopa was thinking.

23 Q. (BY MR. CORNFELD) You're the CEO of

24 Averhealth, and at the time of this test, you were

25 the COO, and you just told us you don't know what

|   |  |
|---|--|
| <p style="text-align: right;">Page 105</p> <p>1 it means to have a positive cocaine in hair with a</p> <p>2 negative benzoylecgonine. So do you have any idea</p> <p>3 whether you would expect Maricopa County to know</p> <p>4 that?</p> <p>5 <b>A. I would expect that they know when to</b></p> <p>6 <b>ask questions about test results. It is typical</b></p> <p>7 <b>for our customers, when clients raise concerns</b></p> <p>8 <b>about the test results, that then the customer</b></p> <p>9 <b>comes to us to ask for interpretation.</b></p> <p>10 Q. Do you know if -- what Ms. Foulger</p> <p>11 told Maricopa County about her test results?</p> <p>12 <b>A. I do not.</b></p> <p>13 Q. All right. And if you look at --</p> <p>14 under Laboratory Requirements, paragraph H, it</p> <p>15 says: Maintain all positive test specimens for a</p> <p>16 minimum of one year.</p> <p>17 Correct?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. And that was a requirement you had</p> <p>20 under the contract with Maricopa County, correct?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. What's the reason for that</p> <p>23 requirement?</p> <p>24 <b>A. Typically, the reason is if the</b></p> <p>25 <b>Court -- sorry, not the Court -- well, I'm using</b></p>  | <p style="text-align: right;">Page 107</p> <p>1 for 365 days from date of collection --</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. -- correct?</p> <p>4 And so that applied to this test,</p> <p>5 which was a test of hair, correct?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. So you had that obligation not just</p> <p>8 in the contract, but in the report you sent to</p> <p>9 Ms. Foulger, correct?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. Do you see on the test report for</p> <p>12 Ms. Foulger, there's a Certification Statement?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. And the last sentence of this</p> <p>15 Certification Statement -- or excuse me, not the</p> <p>16 last sentence, but there is a sentence that says:</p> <p>17 I acknowledge at submission of false information</p> <p>18 may subject me to prosecution for the criminal</p> <p>19 offense of perjury?</p> <p>20 <b>A. I see that statement, yes.</b></p> <p>21 Q. And that statement was signed by the</p> <p>22 certification technician Krista Ferando?</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. Who is Ms. Ferando?</p> <p>25 <b>A. She's one of our certifying</b></p>   |
| <p style="text-align: right;">Page 106</p> <p>1 <b>the Court as in the customer. So our customer</b></p> <p>2 <b>often asks us to maintain them in case they want to</b></p> <p>3 <b>come back and ask for any additional testing.</b></p> <p>4 Q. Or have another lab test the sample?</p> <p>5 <b>A. Or that.</b></p> <p>6 Q. Or if the -- if the person being</p> <p>7 tested wants to have another lab test the sample?</p> <p>8 <b>A. If the person being tested wants</b></p> <p>9 <b>another lab to test it, then they need to go</b></p> <p>10 <b>through -- our contract is with Maricopa County, so</b></p> <p>11 <b>we need Maricopa County's permission to send, and</b></p> <p>12 <b>they need to make the request, not the client</b></p> <p>13 <b>themselves, to have the specimen retested in</b></p> <p>14 <b>another laboratory.</b></p> <p>15 Q. And if we would look at the -- the</p> <p>16 test result in --</p> <p>17 <b>A. Which number is that?</b></p> <p>18 Q. Exhibit 14.</p> <p>19 <b>A. Thank you.</b></p> <p>20 Q. Do you see -- do you have that there?</p> <p>21 <b>A. I do.</b></p> <p>22 Q. Okay. If you look at item 3 under</p> <p>23 Notes, do you see it says: Nonnegative samples</p> <p>24 will be sealed in the original container, properly</p> <p>25 marked for identification, and locked in storage</p> | <p style="text-align: right;">Page 108</p> <p>1 <b>scientists.</b></p> <p>2 Q. So she was certifying, subject to the</p> <p>3 potential prosecution for the criminal offense of</p> <p>4 perjury, that nonnegative samples will be sealed in</p> <p>5 the original container, properly marked for</p> <p>6 identification, and locked in storage for 365 days</p> <p>7 from date of collection, correct?</p> <p>8 <b>A. She's certifying that she reviewed</b></p> <p>9 <b>the data, released the test results.</b></p> <p>10 Q. Well, she's certifying that -- that</p> <p>11 submission of false information may subject me to</p> <p>12 prosecution for a criminal offense, correct?</p> <p>13 <b>A. Yes, that statement is in there.</b></p> <p>14 Q. Not just data, but false information,</p> <p>15 and part of the information that she was certifying</p> <p>16 was that nonnegative samples will be sealed in the</p> <p>17 original container, properly marked for</p> <p>18 identification, and locked in storage for 365 days</p> <p>19 from the date of collection, correct?</p> <p>20 MR. CEJAS: Object to the form.</p> <p>21 Assumes facts not in evidence.</p> <p>22 <b>THE WITNESS: Yes.</b></p> <p>23 MR. CEJAS: Is this 16?</p> <p>24 MR. CORNFELD: Yeah, 16.</p> <p>25 Q. (BY MR. CORNFELD) I've handed you</p> |

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1 what's been marked as Exhibit 16, which is a  
2 one-page document with the Bates number 38388. And  
3 it's an e-mail exchange between Lee Bostic and  
4 Michael Giraldor.  
5 Do you see that?  
6 **A. Yes.**  
7 Q. Dated January 12th, 2022?  
8 **A. Yes.**  
9 Q. And you see the date of Ms. Foulger's  
10 test report was January 5th, 2022, correct?  
11 **A. Yes.**  
12 Q. So this is within a week afterwards?  
13 **A. Yes.**  
14 Q. If we start at the bottom for the  
15 first e-mail, it's by Michael Giraldor, who has an  
16 e-mail address from Averhealth.com. Who is  
17 Mr. Giraldo -- Giraldor?  
18 **A. He's a customer service**  
19 **representative.**  
20 Q. In Arizona?  
21 **A. He actually resides, or resided --**  
22 **he's no longer employed with us -- part of our**  
23 **customer service team. I believe he may have**  
24 **actually lived in Virginia.**  
25 Q. Okay -- well, okay. And he's writing

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1 to Lee Bostic. Who is Lee Bostic?  
2 **A. He was the area manager at the time.**  
3 Q. The area manager for Arizona?  
4 **A. Yes, that is correct.**  
5 Q. And the subject is Katarzyna Foulger,  
6 and his e-mail states, in full: The lady is  
7 calling asking if she can have the hair follicle  
8 back because she wants it tested in another lab.  
9 Can we help her with that? And then it has her  
10 name, Katarzyna Foulger and her phone number.  
11 Do you see that?  
12 **A. Yes.**  
13 Q. And Mr. Bostic -- and that was  
14 dated -- excuse me, that was dated January 12th,  
15 2022, at 8:20 a.m., correct?  
16 **A. 2020 -- yes. January 12th, yes,**  
17 **8:20 a.m.**  
18 Q. All right. And Mr. Bostic wrote back  
19 at 10:23 a.m. and says: The answer to that is no.  
20 Our hair follicle screens are one and done. The  
21 hair is destroyed during the testing process.  
22 Do you see that?  
23 **A. I do.**  
24 Q. Is that a true statement?  
25 **A. When the sample is received, we need**

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1 **50 grams of the sample to go through the testing**  
2 **process. Part of testing for hair is you need to**  
3 **take that hair, you need to pulverize it, you need**  
4 **to liquefy it, and you need to -- to**  
5 **reconstitute -- so basically, you -- you pulverize**  
6 **the hair, you put in, you know, other chemicals**  
7 **into the hair to be able to test for it, so you --**  
8 **you make it into a solution that then is prepped**  
9 **and run on the instrument, and -- once it's**  
10 **reported.**  
11 **So, depending upon how much hair was**  
12 **collected, it is -- it is a factual statement that**  
13 **through that testing process, all of that hair is**  
14 **used to be prepped and run on the analyzer.**  
15 **If all 50 grams were not used, then**  
16 **there may still continue to be hair. But what's**  
17 **actually used to test for hair samples is**  
18 **completely used, run on the instrument, and so**  
19 **there's no specimen left.**  
20 Q. So it's true that the hair was  
21 destroyed, or hair was destroyed?  
22 **A. Her hair was used in the testing**  
23 **process.**  
24 Q. It says -- he said the hair is  
25 destroyed during the testing process.

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1 **A. It's used up to be tested.**  
2 Q. All right. And then Mr. Giraldor  
3 says: The test came back positive, and she was  
4 told that the lab kept it if the test comes  
5 positive.  
6 Do you see that? He responded that  
7 same day at 8:27 a.m.  
8 **A. Yes, I do see that.**  
9 Q. And we know that she was told that  
10 because it was on her test report, correct?  
11 **A. Yes.**  
12 **If there's no hair left, right, so we**  
13 **only received 50 grams of specimen, it's not**  
14 **physically possible for --**  
15 Q. My question was --  
16 **A. I understand that, but I'm trying to**  
17 **explain the testing process.**  
18 Q. You've already explained that.  
19 **A. Okay.**  
20 Q. My question is simply: We know she  
21 was told that the lab kept it if the test comes  
22 positive because it was on her lab report, correct?  
23 **A. We would have retained any sample**  
24 **that was left --**  
25 Q. She was --



|   |  |
|---|--|
| <p>Page 113</p> <p>1 <b>A. -- if there was any left.</b></p> <p>2 Q. My question was: She was told in the</p> <p>3 lab report what she said to Mr. Giraldor she was</p> <p>4 told, which was that the lab kept it if the test</p> <p>5 comes back positive, correct?</p> <p>6 <b>A. If there's any specimen left, yes.</b></p> <p>7 Q. She -- it did not say if there's any</p> <p>8 specimen left --</p> <p>9 <b>A. Okay.</b></p> <p>10 Q. -- did it? You're just making that</p> <p>11 up.</p> <p>12 <b>A. I'm not making that up --</b></p> <p>13 Q. All she --</p> <p>14 MR. CEJAS: Wait, wait, wait --</p> <p>15 Q. (BY MR. CORNFELD) You're making that</p> <p>16 up --</p> <p>17 <b>A. I'm not making that up --</b></p> <p>18 Q. -- as part of something --</p> <p>19 COURT REPORTER: Okay. Okay. One at</p> <p>20 a time, guys.</p> <p>21 MR. CEJAS: You have to --</p> <p>22 Q. (BY MR. CORNFELD) My question had to</p> <p>23 do with what she was told. You have no knowledge</p> <p>24 that she was told it would be -- it would be kept</p> <p>25 if there was enough to keep it. All you know is</p>   | <p>Page 115</p> <p>1 cocaine?</p> <p>2 <b>A. I don't --</b></p> <p>3 MR. CEJAS: Object to form.</p> <p>4 Foundation.</p> <p>5 <b>THE WITNESS: -- know whether she's</b></p> <p>6 <b>used cocaine or not.</b></p> <p>7 <b>I can understand her being upset for</b></p> <p>8 <b>having a positive cocaine result.</b></p> <p>9 Q. (BY MR. CORNFELD) And being even</p> <p>10 more upset if it came back positive when she never</p> <p>11 used cocaine.</p> <p>12 MR. CEJAS: Object to form. Assumes</p> <p>13 facts not in evidence.</p> <p>14 Q. (BY MR. CORNFELD) I'm asking you to</p> <p>15 assume she never used cocaine. That's going to be</p> <p>16 her testimony.</p> <p>17 <b>A. That can be her testimony. I --</b></p> <p>18 <b>okay.</b></p> <p>19 Q. And can you blame her for being very</p> <p>20 upset about getting a positive test result back?</p> <p>21 <b>A. Nobody likes to get a positive test</b></p> <p>22 <b>result back and is upset about it.</b></p> <p>23 Q. And that's especially true for</p> <p>24 someone who's never used cocaine, correct?</p> <p>25 MR. CEJAS: Object to form. Assumes</p>  |
| <p>Page 114</p> <p>1 what it said on the lab report, which was that the</p> <p>2 test would be kept if it was positive, and what was</p> <p>3 in the agreement in the contract with Maricopa</p> <p>4 County in which you promised to keep it for a year,</p> <p>5 correct?</p> <p>6 MR. CEJAS: Object to form. It's</p> <p>7 argumentative and it's compound.</p> <p>8 Q. (BY MR. CORNFELD) Correct?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. All right. And then it says: She --</p> <p>11 she needs to -- retesting -- this is Mr. Giraldor.</p> <p>12 <b>A. Uh-huh.</b></p> <p>13 Q. She needs to retesting and is very</p> <p>14 upset about it.</p> <p>15 Do you see that?</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. Can you blame her for being very</p> <p>18 upset when she was told it would be kept for a year</p> <p>19 and now she's -- she's told that it wasn't kept at</p> <p>20 all?</p> <p>21 <b>A. Can you restate that question for me,</b></p> <p>22 <b>please?</b></p> <p>23 Q. Can you -- can you blame -- first of</p> <p>24 all, can you blame her for being very upset that</p> <p>25 the test came back positive when she never used</p> | <p>Page 116</p> <p>1 facts not in evidence.</p> <p>2 <b>THE WITNESS: Again, I don't know</b></p> <p>3 <b>whether or not she's used cocaine.</b></p> <p>4 Q. (BY MR. CORNFELD) I'm asking you to</p> <p>5 assume she never used cocaine. No -- and my</p> <p>6 question is: They are even more upset -- people</p> <p>7 are even more upset if they get a positive result</p> <p>8 and they never used cocaine, correct?</p> <p>9 <b>A. You can't speculate they're more</b></p> <p>10 <b>upset. People are upset for positive test results.</b></p> <p>11 Q. Okay. And then Mr. Giraldor says:</p> <p>12 She is asking if you could contact her through her</p> <p>13 phone number, and he provides the phone number.</p> <p>14 Correct?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. And Mr. Bostic responds again that</p> <p>17 same morning -- or that same afternoon and says:</p> <p>18 The lab keeps urine if it's positive, not hair.</p> <p>19 Do you see he says that?</p> <p>20 <b>A. I do see that, yes.</b></p> <p>21 Q. And he doesn't say not hair unless</p> <p>22 there's some left over. He just makes the blanket</p> <p>23 statement, as he did before, when he said it's one</p> <p>24 and done, saying the laboratory doesn't keep hair.</p> <p>25 Correct?</p> |

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1 **A. Yes.**  
2 Q. And he says: Yes, I'll reach out.  
3 Do you see that?  
4 **A. Yes.**  
5 Q. I'd like you to assume that he never  
6 called her. Nobody ever called her. Can you blame  
7 her for being even more upset?  
8 MR. CEJAS: Objection. Foundation --  
9 Q. (BY MR. CORNFELD) Or do you have any  
10 idea -- strike that.  
11 Do you have any idea why he didn't  
12 call her?  
13 MR. CEJAS: Objection, foundation.  
14 Assumes facts not in evidence.  
15 **THE WITNESS: I don't know that he**  
16 **called her or didn't call her.**  
17 Q. (BY MR. CORNFELD) Wouldn't the  
18 responsible thing have been to -- to call her and  
19 explain?  
20 **A. I don't know that he didn't call**  
21 **her --**  
22 Q. I'm asking you to assume that she  
23 didn't -- that he didn't call her because she's  
24 going to testify that he never called her, nobody  
25 ever called her.

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1 **A. Okay.**  
2 MR. CEJAS: Object to form. Assumes  
3 facts not in evidence.  
4 Q. (BY MR. CORNFELD) Wouldn't the  
5 responsible thing have been to call her?  
6 **A. In here, if he said he would call**  
7 **her, yes.**  
8 Q. And -- and wouldn't Ms. Ferando have  
9 known at the time of her report whether there was  
10 enough hair left over to keep it for a year?  
11 **A. She doesn't know, she doesn't have**  
12 **the original container in front of her.**  
13 Q. She could find out, when she's  
14 certifying subject to a criminal offense, that  
15 there was -- that the lab would keep the sample for  
16 365 days, locked in storage, she could find out  
17 before she certifies that, couldn't she?  
18 MR. CEJAS: Object to the form.  
19 **THE WITNESS: Based on our processes**  
20 **and procedures, she -- she doesn't have the**  
21 **specimen in front of her.**  
22 Q. (BY MR. CORNFELD) No, but she could  
23 find out, couldn't see?  
24 **A. Is it possible to find out? Yes. Is**  
25 **it probable in our processes? No.**

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1 Q. So instead, she just makes the false  
2 statement that nonnegative samples will be sealed  
3 in the original container, properly marked for  
4 identification, and locked in storage for 365 days  
5 from date of collection, correct?  
6 MR. CEJAS: Object to the form.  
7 Foundation.  
8 **THE WITNESS: That statement is on**  
9 **here, yes.**  
10 Q. (BY MR. CORNFELD) And that's a --  
11 that statement is false --  
12 MR. CEJAS: Object to the form --  
13 Q. (BY MR. CORNFELD) -- correct?  
14 MR. CEJAS: Object to the form.  
15 Assumes facts not in evidence, foundation.  
16 **THE WITNESS: It appears to be.**  
17 Q. (BY MR. CORNFELD) Not just appears  
18 to be. You think now she should be prosecuted for  
19 perjury?  
20 MR. CEJAS: Objection. Calls for --  
21 Q. (BY MR. CORNFELD) By following  
22 your -- I mean, this is a standard form that you  
23 send out, correct?  
24 **A. Yes.**  
25 MR. CEJAS: Let me -- I'm object to

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1 the predicate of that question, not the second  
2 part, as calling for a legal conclusion.  
3 Q. (BY MR. CORNFELD) I'm sorry, did you  
4 answer that yes?  
5 **A. Yes.**  
6 Q. And so the statement about storage,  
7 that's just part of your form, isn't it? That goes  
8 in every report, doesn't it?  
9 **A. I don't believe it goes into every**  
10 **report, no.**  
11 Q. It's -- it -- it found its way into  
12 this report because it's part of a form, correct?  
13 **A. It is part of this certification**  
14 **statement, yes.**  
15 Q. All right. I mean, she didn't sit  
16 there at the keyboard and type that out. It just  
17 was built into the form that has her name at the  
18 bottom, correct?  
19 **A. Yes.**  
20 Q. Do you think she should be the one  
21 who is potentially prosecuted for perjury for that  
22 or should it be Averhealth itself for putting into  
23 its form a false statement?  
24 MR. CEJAS: Object to the form.  
25 Assumes facts not in evidence, calls for a legal

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1 conclusion, it's argumentative.

2 **THE WITNESS: No, she should not be**

3 **prosecuted.**

4 Q. (BY MR. CORNFELD) It should be

5 whoever put that into the form when it -- when it

6 wasn't true, correct?

7 MR. CEJAS: Same objection. Calls

8 for a legal conclusion.

9 Q. (BY MR. CORNFELD) Yes?

10 **A. Can you repeat the question, please?**

11 Q. It should be whoever was responsible

12 for putting that statement -- that false statement

13 into the form --

14 **A. It's not a false statement. There --**

15 **there are times that there is plenty of the sample**

16 **there for it to be retested. It's not a false**

17 **statement.**

18 Q. It's a false statement as applied to

19 hair when Mr. --

20 **A. Not always.**

21 Q. -- when Mr. Bostic said they're just

22 not kept.

23 **A. This was a general statement. That's**

24 **not the case. We do keep it. We keep the original**

25 **container with the initials, the seals, and**

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1 **everything. And if there's hair in there, it would**

2 **have the opportunity to be sent out to be retested.**

3 **The original container is -- is retained.**

4 Q. Okay. I -- you're not -- you're not

5 retracting your testimony that this statement 3

6 under storage about nonnegative samples being

7 sealed in the original container, properly marked

8 and -- for identification, and locked in storage

9 for 365 days from date of collection, you're not

10 retracting your statement that that was a false

11 statement, are you?

12 **A. The original packaging container --**

13 Q. No, my question is --

14 MR. CEJAS: Let -- let her --

15 Q. (BY MR. CORNFELD) -- are you

16 retracting your statement that you made about three

17 minutes ago that that was a false statement?

18 MR. CEJAS: Objection.

19 Argumentative.

20 Go ahead and answer.

21 **THE WITNESS: So there's a difference**

22 **between the liquid specimen that's tested on the**

23 **analyzer that we talked about, that -- what**

24 **Mr. Bostic is referring to in this e-mail, that is**

25 **the actual liquid form of the hair that's tested**

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1 **versus the actual packaging.**

2 **The packaging itself, even for Mr. --**

3 **Ms. Foulger's hair, that original packaging with**

4 **the specimen identifier, the actual package that**

5 **the hair would come in, that is actually retained.**

6 **The question is, is there any hair left to be**

7 **retested or not.**

8 **So it is not -- it is -- they're --**

9 **they're separate and apart two different things.**

10 **So we had the -- we had the original packaging**

11 **container and identifier on it.**

12 Q. (BY MR. CORNFELD) The statement in

13 the report --

14 **A. Uh-huh.**

15 Q. -- doesn't say only the packaging is

16 retained for 365 days. It says nonnegative samples

17 will be sealed. Correct?

18 **A. If we --**

19 Q. Is that what it says?

20 **A. If we've used up the specimen --**

21 Q. Excuse me. Is that what it says?

22 **A. If we've used up the specimen,**

23 **there's nothing to retain --**

24 Q. Did you --

25 **A. -- the packaging itself remains.**

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1 Q. Does it say nonnegative samples will

2 be sealed in the original container and not just

3 the original container will be kept?

4 **A. It says nonnegative samples.**

5 Q. All right. And that was false,

6 wasn't it?

7 MR. CEJAS: Objection. Asked and

8 answered.

9 Q. (BY MR. CORNFELD) Yeah, I think --

10 you're not retracting your statement that that was

11 false, are you?

12 MR. CEJAS: Objection.

13 **THE WITNESS: I am --**

14 Q. (BY MR. CORNFELD) Are you? Are you

15 retracting any of the testimony you gave?

16 MR. CEJAS: Objection --

17 **THE WITNESS: I am not retracting.**

18 Q. (BY MR. CORNFELD) Okay.

19 **A. I'm clarifying --**

20 Q. Then that's --

21 **A. I'm clarifying the difference between**

22 **the sample that gets tested on the analyzer versus**

23 **the original container that the specimen was**

24 **delivered in.**

25 Q. We understand what your practices

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1 are. My question had to do with what you told  
2 customers. Did -- do you think you -- you should  
3 go back to Arizona and clarify what's in that  
4 contract and say that you are not keeping hair  
5 samples for a year?  
6 **A. If there's enough sample, we are**  
7 **keeping hairs -- hair for a year.**  
8 Q. Do you think you should go back to  
9 Arizona and say we need to modify this contract and  
10 we've been violating the requirement that says that  
11 the laboratory shall maintain negative test  
12 specimens -- excuse me, maintain all positive test  
13 specimens for a minimum of one year?  
14 MR. CEJAS: Object to the form.  
15 **THE WITNESS: No. Because if there's**  
16 **sample left, we retain it for a year, and we retain**  
17 **the original packaging.**  
18 Q. (BY MR. CORNFELD) Do you think you  
19 should go back to Arizona and say that this -- we  
20 did not mean to agree that we would maintain all  
21 positive test specimens for a year?  
22 MR. CEJAS: Object to the form.  
23 **THE WITNESS: Can you rephrase your**  
24 **question?**  
25 Q. (BY MR. CORNFELD) Do you see that

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1 the agreement says maintain all positive test  
2 specimens for a minimum of one year?  
3 **A. I do.**  
4 Q. And that wasn't true, was it?  
5 MR. CEJAS: Object to the form.  
6 Asked and answered.  
7 **THE WITNESS: My attorney indicated**  
8 **asked and answered.**  
9 Q. (BY MR. CORNFELD) Go ahead and  
10 answer. You can answer.  
11 MR. CEJAS: You can answer it one  
12 more time and then we'll move on. But go ahead.  
13 **THE WITNESS: Okay. As I've**  
14 **indicated, for hair tests, you have to take out**  
15 **50 grams --**  
16 Q. (BY MR. CORNFELD) No.  
17 **A. -- to test that, and that's not**  
18 **capable to be maintained. But any other hair and**  
19 **the original packaging and all of it, and the**  
20 **identifiers is maintained for one year.**  
21 Q. Does it say maintain all positive  
22 test spec -- I'm sorry, read that. Maintaining all  
23 positive test specimens, that is not true.  
24 Ms. Foulger's positive test specimen was not  
25 maintained for a minimum of a year.

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1 **A. Because it was all --**  
2 MR. CEJAS: Object to the form.  
3 **THE WITNESS: -- all used during this**  
4 **sample process.**  
5 Q. (BY MR. CORNFELD) Whatever reason,  
6 it wasn't maintained for a year, was it?  
7 **A. The original packaging was retained**  
8 **with the label on it.**  
9 Q. The specimen wasn't retained as -- as  
10 the contract requires. Do you believe that you  
11 have -- that you should go back to Arizona and tell  
12 them we shouldn't have said maintain all positive  
13 test specimens, we should say maintain all positive  
14 test specimens if there's any left over?  
15 MR. CEJAS: Object to the form. It's  
16 argumentative, asked and answered multiple times  
17 now. One last time and we're moving on.  
18 **THE WITNESS: I've made it clear on**  
19 **what we retain and what's written down.**  
20 Q. (BY MR. CORNFELD) I understand that.  
21 **A. Yes.**  
22 Q. Do you believe -- do you think you  
23 should go back to Arizona and say we shouldn't have  
24 agreed to that because that's not what --  
25 **A. No, I don't.**

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1 Q. -- we're doing, we need to modify?  
2 **A. No, I don't. No.**  
3 Q. And -- and could you have collected  
4 more hair so that you would have enough left over?  
5 **A. Our procedures says to collect**  
6 **50 grams. It is one of those that it's a balance**  
7 **between not wanting to take out a huge chunk of**  
8 **somebody's hair, that people can find invasive**  
9 **versus having enough to be able to test the**  
10 **specimen. So we've chosen to have enough to be**  
11 **able to test it, but not so much that we have**  
12 **invasively, that we leave a huge hole in their**  
13 **hair --**  
14 Q. And not --  
15 **A. -- in their head, to test.**  
16 Q. -- and not so -- you wouldn't put a  
17 big hole in the head if you took a little more.  
18 There wouldn't be a hole in the head.  
19 **A. You're talking about this size,**  
20 **right? And so to have -- to have -- this size.**  
21 **Okay? Thank you. An eraser -- a little bit larger**  
22 **than an eraser size. Yes, unfortunately, many**  
23 **people find it very invasive, so we collect enough**  
24 **to be able to test the samples and not to be**  
25 **invasive.**

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1 Q. And not so that you could comply with  
2 the provision in your contract and the statement in  
3 your test report that you maintain all test  
4 specimens for a minimum of a year, correct?  
5 **A. No. I -- I've already asked and**  
6 **answered that.**  
7 Q. And -- and you don't -- you don't  
8 collect enough so that you can comply with that  
9 provision in the contract, correct?  
10 **A. There are times that we do.**  
11 Q. But you -- not all specimens,  
12 correct?  
13 **A. Correct.**  
14 Q. Handing you what's been marked as  
15 Exhibit 17 to this deposition. It's a one-page  
16 exhibit bearing the Bates number FOU00036, and it  
17 is headed Aversys Account, Arizona, Maricopa  
18 County. And it's a test report.  
19 **A. Uh-huh.**  
20 Q. Do you have that?  
21 **A. Yes.**  
22 Q. And do you see that that is another  
23 test report on Ms. Foulger's sample from December  
24 of 2021?  
25 **A. Which date in December 2021? If we**

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1 **can clarify. December 13, 2021, collected, yes.**  
2 Q. And do you see that it bears the same  
3 accession number as on Exhibit 14, the data pack  
4 from Ms. Foulger's test?  
5 **A. What's the -- is that 14? Thank you.**  
6 Q. Yes.  
7 **A. You said 14. I...**  
8 Q. Yeah.  
9 **A. Yes, I do.**  
10 Q. But it's a different test report,  
11 correct?  
12 **A. It was reported a different time,**  
13 **yes.**  
14 Q. And it has different results,  
15 correct?  
16 **A. Yes.**  
17 Q. This one's also positive for cocaine  
18 and also supposedly positive for 6-MAM, correct?  
19 **A. Yes.**  
20 Q. I want you to assume that Ms. Foulger  
21 received Exhibit 17.  
22 **A. Okay.**  
23 Q. With the -- with the report date --  
24 and you see that it has the report date December 2,  
25 2022?

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1 **A. Uh-huh.**  
2 Q. Yes?  
3 **A. Yes.**  
4 Q. And the report date of the lab report  
5 that's in her data pack is dated January 5th, 2022.  
6 **A. Yes.**  
7 Q. All right. Okay. I want you to  
8 assume that she received both of these. First, she  
9 received Exhibit 17, and then she received a copy  
10 of the report that's in her data pack.  
11 **A. Okay.**  
12 Q. The January 5th report. Do you have  
13 any idea why she got two inconsistent reports?  
14 **A. The one that was reported on the 5th**  
15 **was updated.**  
16 Q. Do you have any idea why?  
17 **A. I do not. I'd need to look into**  
18 **that.**  
19 Q. All right. If you -- if you do that,  
20 can you do that before we finish tomorrow?  
21 **A. I believe so. I will try.**  
22 Q. Okay.  
23 **A. Can I write on this or I'm not**  
24 **supposed to write on exhibits?**  
25 Q. Yeah, I --

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1 MR. CEJAS: I made a note. We're  
2 okay.  
3 **THE WITNESS: Okay. Sorry about**  
4 **that.**  
5 MR. PLEBAN: Do you want a copy?  
6 **THE WITNESS: That's okay.**  
7 MR. PLEBAN: Here, just take this  
8 one.  
9 **THE WITNESS: Do you want me to**  
10 **update the sticker so there's no comment on here?**  
11 MR. CEJAS: No, no, that's fine. Did  
12 you draw on there?  
13 **THE WITNESS: All I wrote was -- I**  
14 **started to say why -- I wrote on the back.**  
15 MR. CORNFELD: You wrote on the back?  
16 MR. PLEBAN: It's fine.  
17 MR. CORNFELD: You wrote on the back?  
18 It's okay.  
19 MR. PLEBAN: We have it on the record  
20 now, so we're good.  
21 **THE WITNESS: Okay.**  
22 MR. PLEBAN: You can keep that one  
23 for you if you want it.  
24 THE VIDEOGRAPHER: Ms. Delagnes, you  
25 lost your mic. It's over there.



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1 **THE WITNESS: Oh, sorry. Thank you.**

2 THE VIDEOGRAPHER: It's swirling.

3 MR. CORNFELD: Let's go off the

4 record. This would be a good time for lunch.

5 THE VIDEOGRAPHER: Time is 12:29 p.m.

6 We are off the record.

7 (A lunch break was taken.)

8 THE VIDEOGRAPHER: The time is

9 1:29 p.m. We are back on the record.

10 Q. (BY MR. CORNFELD) I just -- I'd like

11 to return just -- for a moment to the -- to the two

12 test reports on Katza Foulger's test. You said

13 that there was a second test because it was

14 updated. What did you mean by that?

15 **A. That's what I was looking into, that**

16 **I said I would follow up.**

17 Q. Oh.

18 **A. You're hoping that I would have an**

19 **answer by tomorrow. So obviously it shows that it**

20 **was originally reported on the 2nd, right? So that**

21 **time frame, and it's what you showed me in**

22 **Exhibit 17 shows it was reported on 1/2, and then**

23 **it was re-reported on 1/5, if I have -- what was**

24 **the other document number?**

25 MR. PLEBAN: 14?

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1 Q. (BY MR. CORNFELD) Yeah.

2 **A. 14? Yeah. So it was reported,**

3 **pulled back, and re-reported. So I'm trying to**

4 **figure out why.**

5 Q. Okay. And --

6 **A. That's what I'm looking into.**

7 Q. Okay. And how it was re-reported, do

8 you --

9 **A. How it was re-reported? So the first**

10 **one that you showed me has both cocaine and 6-MAM,**

11 **right? Those were the drugs on there.**

12 Q. I'm sorry, I didn't mean the results,

13 but what they did to re-report it?

14 **A. They would release it back through**

15 **whoever -- however the test results are set up in**

16 **the database. So I don't know if it was sent**

17 **through, if it was just pulled on our database**

18 **itself, or if it was set up on direct results**

19 **distribution, so it would have been e-mailed out.**

20 **I don't know, I'd have to go back and look at her**

21 **profile.**

22 Q. Okay. I -- I don't remember -- I

23 mean, she received -- Mrs. Foulger received both

24 test reports, and I don't recall if it was e-mail

25 or regular mail.

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1 **A. It would not be regular mail. We**

2 **don't send out anything through U.S. mail.**

3 Q. Oh, okay.

4 **A. So it could have been either pulled**

5 **in our database or for -- especially in Maricopa,**

6 **for the family departments specifically, a lot of**

7 **them are set up on direct results distribution,**

8 **meaning we -- that the results were e-mailed out.**

9 Q. Okay. And as far as what reanalysis

10 they did or whether they --

11 **A. That's what I'm looking into.**

12 Q. Or whether they --

13 **A. That's what I said I would try and**

14 **get back to you by tomorrow.**

15 Q. Okay. Okay.

16 All right. When -- when Averhealth

17 enters into an agreement with a customer --

18 **A. Uh-huh.**

19 Q. -- you expect the customer to live

20 up to that agreement, right?

21 **A. What do you mean we "expect the**

22 **customer to live up to that agreement"?**

23 Q. That they're going to abide by the

24 provisions of the agreement, do what they said they

25 would do.

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1 **A. Yes.**

2 Q. Okay. And -- and of course the

3 customer would expect Averhealth to do the same,

4 correct?

5 **A. Yes.**

6 Q. All right. And -- and you have no

7 question about that, that the customer would expect

8 Averhealth to live up to its agreement?

9 **A. Yes.**

10 Q. And is it your view that Averhealth

11 does live up to its agreements?

12 **A. Yes.**

13 Q. Despite what we talked about this

14 morning?

15 **A. Yes.**

16 Q. All right. When -- when you do tests

17 for a court or a family agency or someone like that

18 and somebody comes in for the first time, and the

19 result is positive, you know that very often that

20 means they're going to have to come back for more

21 tests?

22 **A. Don't -- I don't know that for sure.**

23 Q. You --

24 **A. I don't set their testing, how often**

25 **they test. That's all established by the customer.**

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1 Q. Sure, sure. But you -- you  
2 understand that that will happen, correct?  
3 **A. It doesn't always happen. Again,**  
4 **it's the -- it's up to our customer to set the**  
5 **frequency of how they're tested.**  
6 Q. Okay. I -- I didn't ask whether it  
7 always happens, but you understand it does happen?  
8 **A. Sure.**  
9 Q. Okay.  
10 **A. Yes, I guess, not sure.**  
11 Q. Yes. Okay. Yes. And for example,  
12 it happened with both Mr. Shnitzer and  
13 Mrs. Foulger, they went in for tests the first  
14 time, and compared to a cutoff of 100 rather than  
15 500, their tests were positive and they ended up  
16 having to go back for tests every week for months,  
17 even more than a year.  
18 **A. I don't believe that's why they had**  
19 **to test that frequently. I believe that they would**  
20 **have tested that frequently regardless of what that**  
21 **first test result was.**  
22 Q. You understand they initially had  
23 hair tests, and then they had urine tests?  
24 **A. I believe, actually, in some of them,**  
25 **they were done simultaneously. So there was both a**

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1 **hair and a urine collected at the same time.**  
2 Q. Not -- not for Mr. Foulger -- excuse  
3 me, Mr. Shnitzer, and I don't believe for  
4 Mrs. Foulger, they ended up having to do urine  
5 tests later.  
6 **A. I believe in -- in Kat -- sorry,**  
7 **what -- her --**  
8 Q. Mrs. Foulger?  
9 **A. Yeah. In her testing, she did both**  
10 **simultaneously.**  
11 Q. Okay. If she were to testify that  
12 that's what the Court said, you got a positive  
13 test, now you've got to keep coming back for more,  
14 that would mean that because she had a positive  
15 test, she had to keep doing tests for --  
16 **A. If we look at her test history**  
17 **though --**  
18 Q. -- for months.  
19 **A. Can we pull up her test history? I**  
20 **am almost positive she had urine tests done**  
21 **simultaneously to her hair test, and her frequently**  
22 **was set to that.**  
23 Q. We -- we have not received what  
24 you're referring to as her test history. All we  
25 received were the positive tests you did.

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1 **A. That's not true --**  
2 Q. It -- it is.  
3 **A. -- we provided test results for**  
4 **everything, because there was questions about**  
5 **no-shows.**  
6 Q. You -- you provided -- no, you  
7 provided the test reports. We didn't -- if there's  
8 a document called test history --  
9 **A. There is not a document.**  
10 Q. Okay.  
11 **A. There's not a document, but it would**  
12 **show that the same day -- she actually had no-shows**  
13 **even before she started doing urine, but she was**  
14 **doing urine and hair simultaneously.**  
15 Q. She had one hair test, and then if  
16 she were to testify that the Court said because of  
17 that, you've got to go back weeks -- for weeks and  
18 weeks, months, that would mean that because she had  
19 a positive test, she ended up having to do a lot  
20 more tests.  
21 MR. CEJAS: Object to form. Assumes  
22 facts not in evidence.  
23 Subject to that, go ahead.  
24 **THE WITNESS: Okay. If I recall what**  
25 **I read in your Complaint, it was that she didn't**

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1 **show up for tests, which is why the courts ordered**  
2 **her for more testing.**  
3 Q. (BY MR. CORNFELD) That was after she  
4 had the positive hair test and she was ordered to  
5 do more tests. And Mr. Shnitzer only had urine  
6 tests after he had the two positive hair tests.  
7 In any event, you know that when  
8 you -- when you reduced his -- the cutoff for  
9 cocaine in his hair from 500 to 100 resulting in  
10 those positive -- those tests being positive rather  
11 than negative, if they -- if the cutoff had been  
12 500, Averhealth was able to do dozens more tests on  
13 him?  
14 **A. I don't know that --**  
15 MR. CEJAS: Objection --  
16 **THE WITNESS: -- to be the case.**  
17 Q. (BY MR. CORNFELD) Well, you know  
18 that they did do dozens more tests on him, correct?  
19 **A. I don't know that is because of his**  
20 **positive hair test.**  
21 Q. Okay. If he were to testify that  
22 that's what the Court did, then that would be  
23 because of his positive hair tests, that he had to  
24 do the urine test. And you told us that there are  
25 cases where you get a -- you get an initial

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|--|---|
| <p>Page 141</p> <p>1 positive test, and that means you've got to keep<br/>2 going back for more and more tests.<br/>3 <b>A. It's --</b><br/>4 MR. CEJAS: Objection --<br/>5 Q. (BY MR. CORNFELD) And Averhealth --<br/>6 and Averhealth is -- then gets to do more tests --<br/>7 MR. CEJAS: Object to --<br/>8 Q. (BY MR. CORNFELD) -- correct?<br/>9 MR. CEJAS: Object to form. Assumes<br/>10 facts not in evidence, it's compound.<br/>11 <b>THE WITNESS: As I've indicated,</b><br/>12 <b>Averhealth does not set the testing, the standards,</b><br/>13 <b>the frequency that are done. Correct.</b><br/>14 Q. (BY MR. CORNFELD) But you know that<br/>15 that happens. You told me you know that that<br/>16 happens.<br/>17 <b>A. Yes.</b><br/>18 Q. Okay. And when that happens, if a<br/>19 test -- initial test is positive because the cutoff<br/>20 was lowered, that means Averhealth will get a lot<br/>21 more revenue from doing a lot more tests, correct?<br/>22 MR. CEJAS: Object to the form.<br/>23 Assumes facts not in evidence.<br/>24 <b>THE WITNESS: Can I look at -- can I</b><br/>25 <b>go back to Mr. Foulger's [sic] result and look at</b></p>   | <p>Page 143</p> <p><b>1 and benzoylecgonine.</b><br/>2 Q. True. But if an expert were to say<br/>3 looking at the combination, as long as the cocaine<br/>4 is under 500, it doesn't indicate use, would you<br/>5 disagree with that?<br/>6 <b>A. No, I don't know that -- I don't -- I</b><br/>7 <b>don't agree with that. Sorry, I disagree with</b><br/>8 <b>that.</b><br/>9 Q. Tell me what literature supports<br/>10 that.<br/>11 <b>A. There are people that use cocaine</b><br/>12 <b>that test below a hundred.</b><br/>13 Q. Tell me what literature supports the<br/>14 proposition that a cocaine test, regardless of<br/>15 benzoylecgonine, a cocaine result under 500<br/>16 indicates cocaine use.<br/>17 <b>A. It's just a known fact that people</b><br/>18 <b>who use cocaine and you test the specimen, that it</b><br/>19 <b>-- that that positive test result, if they use</b><br/>20 <b>cocaine, right, depending upon when they used the</b><br/>21 <b>cocaine and when the sample was collected,</b><br/>22 <b>there's -- their samples are going to be below 500.</b><br/>23 Q. Tell me what studies show that.<br/>24 <b>A. It's analytically just possible.</b><br/>25 <b>Right, so --</b></p> |
| <p>Page 142</p> <p><b>1 something?</b><br/>2 MR. CEJAS: Go ahead.<br/>3 Q. (BY MR. CORNFELD) Well, what -- what<br/>4 is it you would like to look at?<br/>5 <b>A. I'd like to look at -- I believe he</b><br/>6 <b>was positive for both cocaine and benzoylecgonine,</b><br/>7 <b>and the benzoylecgonine was at the cutoffs that</b><br/>8 <b>SoFT [sic] required as established cutoffs. I just</b><br/>9 <b>would like to look at --</b><br/>10 Q. I will tell you that is correct on<br/>11 the first test.<br/>12 <b>A. Okay.</b><br/>13 Q. Not the second test.<br/>14 <b>A. Okay. So on his first test, we</b><br/>15 <b>followed what you had presented in evidence as</b><br/>16 <b>appropriate cutoff level for benzoylecgonine, and</b><br/>17 <b>he was above that cutoff. So it doesn't matter</b><br/>18 <b>what -- if -- if you're making the statement that</b><br/>19 <b>we picked the 100 versus the 500. We -- correct?</b><br/>20 Q. If -- if an expert were to testify<br/>21 that as long as the cocaine is below 500, it<br/>22 indicates that there's no use, you're not qualified<br/>23 to disagree with that, are you?<br/>24 <b>A. You can't just look at cocaine</b><br/>25 <b>itself, you have to look at combination of cocaine</b></p> | <p>Page 144</p> <p>1 Q. That didn't -- can you cite me a<br/>2 study --<br/>3 <b>A. Can I explain what I'm trying to say</b><br/>4 <b>regardless of a study? I use cocaine today, right?</b><br/>5 <b>I use it multiple times. I'm going to be positive</b><br/>6 <b>for cocaine. Over time, that amount is going to</b><br/>7 <b>continue to degrade. It will test positive between</b><br/>8 <b>500 and 100 for a portion of that time, if you took</b><br/>9 <b>my hair every single day. I used cocaine and it's</b><br/>10 <b>going to be below 500.</b><br/>11 Q. Tell me what studies or what<br/>12 literature support that.<br/>13 <b>A. The -- if you look at anything -- if</b><br/>14 <b>you look at the half-life of drugs and how they</b><br/>15 <b>eliminate out of your body.</b><br/>16 Q. What --<br/>17 <b>A. They eliminate over time.</b><br/>18 Q. What -- what studies show that over<br/>19 time, cocaine use can result in a cocaine level in<br/>20 hair under 500?<br/>21 <b>A. I would have to look those up. But</b><br/>22 <b>I'll find some for you.</b><br/>23 Q. Okay. All right. I'd like to turn<br/>24 to the topic of chain of custody.<br/>25 <b>A. Okay.</b></p>                    |

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| <p>Page 145</p> <p>1 Q. What is chain of custody?</p> <p>2 <b>A. Chain of custody is the record to</b></p> <p>3 <b>show how -- who touched a sample throughout the</b></p> <p>4 <b>entire process.</b></p> <p>5 Q. The entire process beginning with</p> <p>6 collection?</p> <p>7 <b>A. Uh-huh.</b></p> <p>8 Q. Yes?</p> <p>9 <b>A. Yes. I'm sorry.</b></p> <p>10 Q. Through -- through the test report?</p> <p>11 <b>A. Correct, yes.</b></p> <p>12 Q. And even beyond the test report?</p> <p>13 <b>A. There are times that, yes, there's</b></p> <p>14 <b>documentation about when the sample was destroyed.</b></p> <p>15 Q. Okay. I take it there can be, but</p> <p>16 not necessarily.</p> <p>17 <b>A. Negatives are not recorded after the</b></p> <p>18 <b>fact of when it was destroyed.</b></p> <p>19 Q. Okay. Are positives?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. And is there a chain-of-custody</p> <p>22 document?</p> <p>23 <b>A. There is. We use an electronic chain</b></p> <p>24 <b>of custody, so there are -- within our database, it</b></p> <p>25 <b>shows that chain of custody.</b></p>                        | <p>Page 147</p> <p>1 reporting, ensuring legal defensibility that a</p> <p>2 valid sample is collected, appropriately tested,</p> <p>3 and accurately reported. In other words, you</p> <p>4 always know the status of the specimen.</p> <p>5 Do you recognize that?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. And that's a true statement?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. So if the chain of custody from</p> <p>10 collection to the reporting of test results is not</p> <p>11 preserved, the corollary would be that you can't</p> <p>12 defend the test result in court, correct?</p> <p>13 <b>A. That's a very vague statement. Can</b></p> <p>14 <b>you be more specific? Do you have a specific cite</b></p> <p>15 <b>sample you -- or a specific instance you're trying</b></p> <p>16 <b>to...</b></p> <p>17 Q. Well, I'm just taking it from the</p> <p>18 statement you had on your website saying that chain</p> <p>19 of custody being preserved from sample collection</p> <p>20 and shipping through laboratory, and analysis and</p> <p>21 results reporting ensures legal defensibility that</p> <p>22 a valid sample is collected, appropriately tested,</p> <p>23 and accurately reported.</p> <p>24 That was from your web page.</p> <p>25 <b>A. Okay.</b></p>   |
| <p>Page 146</p> <p>1 Q. Okay. And is that the</p> <p>2 chain-of-custody document?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. All right. And would it be a true</p> <p>5 statement that the chain-of-custody document is</p> <p>6 used to keep track of a specimen throughout the</p> <p>7 drug-testing process. It tracks the specimen from</p> <p>8 the moment the donor provides the specimen to the</p> <p>9 collector until the result is reported back to the</p> <p>10 client. Averhealth captures and tracks its chain</p> <p>11 of custody documentation electronically.</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. Okay. I was reading that from</p> <p>14 Dr. Klette --</p> <p>15 <b>A. Klette.</b></p> <p>16 Q. Klette's report?</p> <p>17 <b>A. Klette, yes.</b></p> <p>18 Q. K-L-E-T-T-E?</p> <p>19 <b>A. Yes. Dr. Klette.</b></p> <p>20 Q. I was able to guess right on</p> <p>21 Delagnes, but not that.</p> <p>22 All right. And -- and this is a</p> <p>23 statement I got from Averhealth website: Chain of</p> <p>24 custody is preserved from sample collection and</p> <p>25 shipping through laboratory analysis and results</p> | <p>Page 148</p> <p>1 Q. So the -- so the corollary would be</p> <p>2 that if you don't do that, then you haven't ensured</p> <p>3 legal defensibility, you can't defend the results</p> <p>4 in court, correct?</p> <p>5 <b>A. Without specifics, that's an overly</b></p> <p>6 <b>broad statement I would like to understand.</b></p> <p>7 Q. In what instance, if you didn't have</p> <p>8 a chain of custody, a contemporaneous chain of</p> <p>9 custody from collection to test reporting, could</p> <p>10 you still defend the test results in court?</p> <p>11 <b>A. Again, very broad. Can you give me a</b></p> <p>12 <b>specific question?</b></p> <p>13 Q. I'm asking you what -- you're</p> <p>14 suggesting there are examples where you --</p> <p>15 <b>A. I'm not suggesting there are</b></p> <p>16 <b>examples. I'm saying that's an overly broad</b></p> <p>17 <b>statement, so...</b></p> <p>18 Q. So my question now is: In what</p> <p>19 instances could you be able to defend the test</p> <p>20 result in court without a contemporaneous</p> <p>21 chain-of-custody document as we've described?</p> <p>22 <b>A. And what do you mean by</b></p> <p>23 <b>contemporaneous?</b></p> <p>24 Q. With the results -- you know, putting</p> <p>25 down at the time things happen. That's how a chain</p> |

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| <p>Page 149</p> <p>1 of custody works, right?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. Okay.</p> <p>4 <b>A. Okay.</b></p> <p>5 Q. So what -- what kind of circumstances</p> <p>6 could there be where you could defend the result in</p> <p>7 court without a contemporaneous chain-of-custody</p> <p>8 document from collections to test report?</p> <p>9 <b>A. I don't know how to answer that.</b></p> <p>10 Q. Can you think of anything?</p> <p>11 <b>A. No.</b></p> <p>12 Q. Have you ever defended a test result</p> <p>13 without a contemporaneous chain of custody from</p> <p>14 collection to test reporting?</p> <p>15 <b>A. Not that I'm aware.</b></p> <p>16 MR. PLEBAN: That's your copy.</p> <p>17 That's what I'm here for.</p> <p>18 MR. CORNFELD: Thanks.</p> <p>19 MR. PLEBAN: Big stuff.</p> <p>20 <b>THE WITNESS: You don't want to give</b></p> <p>21 <b>me the tabbed one?</b></p> <p>22 Q. (BY MR. CORNFELD) We'll go through</p> <p>23 it anyway. It's just to help me. And you can see</p> <p>24 I really need it.</p> <p>25 <b>A. Thank you.</b></p>   | <p>Page 151</p> <p>1 went back into the -- to the vehicle?</p> <p>2 <b>A. We'd have to watch the video again.</b></p> <p>3 <b>I don't believe that it was contemporaneous, but</b></p> <p>4 <b>also again, I don't know what was in the water</b></p> <p>5 <b>bottle.</b></p> <p>6 Q. Okay. Did you -- did you notice that</p> <p>7 when she opened up the water bottle, you could hear</p> <p>8 a click, demonstrating that it was a brand new</p> <p>9 water bottle?</p> <p>10 <b>A. That doesn't mean that there couldn't</b></p> <p>11 <b>have been something injected into it.</b></p> <p>12 Q. You think she injected something</p> <p>13 into -- into the water bottle?</p> <p>14 <b>A. I don't know what was in the water</b></p> <p>15 <b>bottle.</b></p> <p>16 Q. Have you -- have you investigated,</p> <p>17 assuming that it was pure water, how it could have</p> <p>18 been that Averhealth reported the result as</p> <p>19 fentanyl?</p> <p>20 MR. CEJAS: Object to the form.</p> <p>21 Assumes facts not in evidence.</p> <p>22 Go ahead.</p> <p>23 <b>THE WITNESS: No.</b></p> <p>24 Q. (BY MR. CORNFELD) Weren't you</p> <p>25 curious?</p>  |
| <p>Page 150</p> <p>1 Q. I've handed you what's been marked as</p> <p>2 Exhibit 18, which has the number -- the Bates</p> <p>3 number 10155 on the first page and is titled: T</p> <p>4 Padilla data pack, with an accession number and</p> <p>5 collection date 1/13/2021.</p> <p>6 Can you confirm that this is the data</p> <p>7 pack for Tiffani Padilla's test for a sample</p> <p>8 collected on January 13, 2021?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. Do you recognize Tiffani Padilla as</p> <p>11 the plaintiff who stated that she sent a water</p> <p>12 sample for testing at Averhealth and the result was</p> <p>13 reported positive for fentanyl?</p> <p>14 <b>A. Yes. I am aware that she alleged</b></p> <p>15 <b>that.</b></p> <p>16 Q. Have you seen her video?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. Do you have an explanation for how</p> <p>19 that could have happened?</p> <p>20 <b>A. I have no idea what was in the water</b></p> <p>21 <b>bottle.</b></p> <p>22 Q. Did you -- did you notice that her</p> <p>23 video was nonstop from the time she was in her</p> <p>24 vehicle before the test until the time she left --</p> <p>25 until the time she left the sample location and</p> | <p>Page 152</p> <p>1 <b>A. No.</b></p> <p>2 Q. You don't give the slightest credence</p> <p>3 to the fact that this was pure water that she sent</p> <p>4 in?</p> <p>5 <b>A. I do not.</b></p> <p>6 Q. You think she made it up and she's</p> <p>7 just lying?</p> <p>8 <b>A. I believe that the specimen that was</b></p> <p>9 <b>received at the laboratory -- and one thing that we</b></p> <p>10 <b>cannot see on the video is the actual accession</b></p> <p>11 <b>number of that sample that came in. Right? You</b></p> <p>12 <b>watch that video, at no point in time does it show</b></p> <p>13 <b>that on that label, that that accession number, it</b></p> <p>14 <b>was 13167535. Not once in the video did she show</b></p> <p>15 <b>that.</b></p> <p>16 Q. You -- you read off the accession</p> <p>17 number for the sample of January 13th, 2021,</p> <p>18 correct?</p> <p>19 <b>A. Yes. 13167535.</b></p> <p>20 Q. That -- you know that's not the</p> <p>21 accession number of the water sample that was</p> <p>22 reported back as fentanyl?</p> <p>23 <b>A. Okay. That's the one that you gave</b></p> <p>24 <b>me in this.</b></p> <p>25 Q. I know. I said this was not the one.</p> |



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| <p>Page 153</p> <p>1 <b>A. Okay. I thought that you said that</b><br/> 2 <b>it was.</b><br/> 3 Q. Do you have any idea where -- whether<br/> 4 Tiffani Padilla even knew what an accession number<br/> 5 was so that she would know that to prove to your<br/> 6 satisfaction that it was the same sample that was<br/> 7 reported with fentanyl, that she should somehow<br/> 8 video that accession number?<br/> 9 <b>A. I think that she would know that</b><br/> 10 <b>there's a number on the label, and that's pretty</b><br/> 11 <b>critical to tying specimens together.</b><br/> 12 Q. You know that she did the video on<br/> 13 January 20th and the date shows up on the video?<br/> 14 <b>A. Okay.</b><br/> 15 Q. Which is the -- which is the -- the<br/> 16 collection date of the sample that was reported<br/> 17 back as fentanyl?<br/> 18 <b>A. Okay.</b><br/> 19 Q. So doesn't that not provide any<br/> 20 credence to you to -- so that you'll say, oh, no,<br/> 21 Mrs. Padilla is not lying about this, the fact that<br/> 22 she hasn't seen her children in years and was<br/> 23 really upset about it, so did this test to prove<br/> 24 that she was not taking drugs?<br/> 25 MR. CEJAS: Object to the form.</p>                                       | <p>Page 155</p> <p>1 Assumes facts not in evidence.<br/> 2 Go ahead.<br/> 3 <b>THE WITNESS: All I can do -- attest</b><br/> 4 <b>to is the sample that was received at our</b><br/> 5 <b>laboratory, that went through proper chain of</b><br/> 6 <b>custody processes, that caused us to test the</b><br/> 7 <b>specimen and report it back.</b><br/> 8 Q. (BY MR. CORNFELD) So are you saying<br/> 9 that she's -- she's committing a fraud on the Court<br/> 10 when she filed a complaint that -- that said it was<br/> 11 pure water?<br/> 12 <b>A. I'm not saying she's committing</b><br/> 13 <b>fraud. I'm telling you what -- what happened. We</b><br/> 14 <b>received a sample with an accession number that we</b><br/> 15 <b>screened, confirmed, and reported back to the</b><br/> 16 <b>Court.</b><br/> 17 Q. Has Averhealth ever reported a false<br/> 18 positive?<br/> 19 <b>A. Yes.</b><br/> 20 Q. And so you're just assuming that this<br/> 21 was not a false positive, and that somehow she<br/> 22 doesn't submit pure water; is that right?<br/> 23 <b>A. I'm saying that we received a</b><br/> 24 <b>specimen. I've -- I've answered this multiple</b><br/> 25 <b>times. We received a specimen, through putting the</b></p>  |
| <p>Page 154</p> <p>1 Q. (BY MR. CORNFELD) Would it give you<br/> 2 the slightest credence?<br/> 3 MR. CEJAS: Object to the form.<br/> 4 <b>THE WITNESS: We received a specimen</b><br/> 5 <b>from this collection site. We did an amino assay</b><br/> 6 <b>screen, we did an LC-MS confirmation. We found</b><br/> 7 <b>fentanyl in both the screen and the confirmation</b><br/> 8 <b>and reported the test result back to Michigan.</b><br/> 9 Q. (BY MR. CORNFELD) I understand.<br/> 10 That wasn't my question.<br/> 11 <b>A. Okay. I don't understand your</b><br/> 12 <b>question.</b><br/> 13 Q. My question is: You're not giving<br/> 14 her the slightest credence. You're saying she's<br/> 15 making this up, she's going to commit a fraud on<br/> 16 the Court by saying she submitted water when it<br/> 17 wasn't water, even though she videotaped the sample<br/> 18 from the moment -- or videotaped the event from the<br/> 19 moment she left the car until after she left the<br/> 20 sample site -- sample selection site?<br/> 21 MR. CEJAS: Object to the form.<br/> 22 Q. (BY MR. CORNFELD) Without -- without<br/> 23 stopping, and that you can hear the click on the<br/> 24 bottle when she opened it up?<br/> 25 MR. CEJAS: Object to the form.</p> | <p>Page 156</p> <p>1 <b>data packs together, right, obviously through</b><br/> 2 <b>the -- pulling the information in the data packs</b><br/> 3 <b>that we've pulled all the information and reviewed</b><br/> 4 <b>it. We show the specimen with an accession number</b><br/> 5 <b>that we reported positive as fentanyl was received,</b><br/> 6 <b>went through our amino assay screening, went</b><br/> 7 <b>through our LC-MS confirmation, found fentanyl in</b><br/> 8 <b>both of those, and reported the result back to the</b><br/> 9 <b>customer.</b><br/> 10 Q. Wasn't my question. Are -- you are<br/> 11 assuming that there was no mistake and it was not a<br/> 12 false positive?<br/> 13 <b>A. I'm assuming --</b><br/> 14 Q. Is that right?<br/> 15 <b>A. -- that there was no mistake at the</b><br/> 16 <b>laboratory of testing the specimen, yes.</b><br/> 17 Q. Okay. Let's look at the chain of<br/> 18 custody in Exhibit 18.<br/> 19 <b>A. Okay. Exhibit 18. So this is not</b><br/> 20 <b>the water bottle specimen?</b><br/> 21 Q. No.<br/> 22 <b>A. Okay.</b><br/> 23 Q. So the chain of custody starts on<br/> 24 page 10157, and I just want to ask about a few<br/> 25 items on it. This is the chain of custody, it</p> |

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| <p style="text-align: right;">Page 157</p> <p>1 starts on 10157 and goes through 10162. That's the</p> <p>2 chain-of-custody document.</p> <p>3 <b>A. Okay.</b></p> <p>4 Q. Yes?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. Okay. And the first page is</p> <p>7 actually -- it starts, it looks like, before she</p> <p>8 came in to give her specimen, correct?</p> <p>9 <b>A. That is correct.</b></p> <p>10 Q. What -- what is shown on the first</p> <p>11 page?</p> <p>12 <b>A. That is shown that at one o'clock in</b></p> <p>13 <b>the morning, Ms. Padilla was selected to have a</b></p> <p>14 <b>collection event. So this is the order being</b></p> <p>15 <b>created in the sample -- in the -- in the database.</b></p> <p>16 Q. All right. And if we look at --</p> <p>17 and -- strike that.</p> <p>18 The -- the second column for each</p> <p>19 item on the first page of the chain-of-custody</p> <p>20 document, it says: System.</p> <p>21 What does that mean?</p> <p>22 <b>A. That's the system creating the random</b></p> <p>23 <b>order within the database.</b></p> <p>24 Q. All right. And then on the second</p> <p>25 page of the chain-of-custody document, the second</p>   | <p style="text-align: right;">Page 159</p> <p>1 <b>came into the collection site, then they would</b></p> <p>2 <b>check this client in. So that's what that is</b></p> <p>3 <b>showing you here is Floyd W. changed it from the</b></p> <p>4 <b>order being created to actually checking in that</b></p> <p>5 <b>event.</b></p> <p>6 Q. Okay. And -- but the point of my</p> <p>7 question is: These third-party collectors, they</p> <p>8 had access to Averhealth's computer system and</p> <p>9 input whatever was occurring into that computer</p> <p>10 system, and then it got recorded in the</p> <p>11 chain-of-custody document, correct?</p> <p>12 <b>A. Correct.</b></p> <p>13 Q. All right. And so the next item, the</p> <p>14 third item on the second page of the</p> <p>15 chain-of-custody document, Exhibit 18, January 13,</p> <p>16 2021, at 17:58 by Floyd W., that shows status</p> <p>17 updated from scheduled to collected; is that right?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. And so that is a record of when</p> <p>20 Mrs. Padilla actually turned her sample in and it</p> <p>21 was collected at the site, correct?</p> <p>22 <b>A. That's the time that she showed up at</b></p> <p>23 <b>the collection site and they created that event</b></p> <p>24 <b>with -- actually had the accession number be</b></p> <p>25 <b>printed on a label.</b></p> |
| <p style="text-align: right;">Page 158</p> <p>1 line, January 13, 2021, at 17:57 or 5:57 p.m., it</p> <p>2 says Floyd W.</p> <p>3 Who is Floyd W.?</p> <p>4 <b>A. That would have been a collector at</b></p> <p>5 <b>Services of Esperanza (Services of Hope).</b></p> <p>6 Q. Okay. And you're looking for -- to</p> <p>7 find Services of Hope, you were looking at the test</p> <p>8 report that says that's where the collection</p> <p>9 occurred, correct?</p> <p>10 <b>A. Yes, that's correct.</b></p> <p>11 Q. Okay. And that was -- that's a -- a</p> <p>12 third-party collector that was -- Floyd W. was not</p> <p>13 an employee of Averhealth?</p> <p>14 <b>A. Correct.</b></p> <p>15 Q. And that's how Michigan worked at the</p> <p>16 time, right? Collections were done by third</p> <p>17 parties such as this organization?</p> <p>18 <b>A. Either by third parties, by case</b></p> <p>19 <b>managers themselves, or we also had some employees</b></p> <p>20 <b>that did work -- that did some collections for us.</b></p> <p>21 Q. Okay. But whoever it was, they would</p> <p>22 input the event into the computer system to record</p> <p>23 what was happening for the chain of custody?</p> <p>24 <b>A. They would -- well, the event was</b></p> <p>25 <b>created in the system, and then when the individual</b></p> | <p style="text-align: right;">Page 160</p> <p>1 Q. Okay. Is that -- is that the -- when</p> <p>2 it says collected, which makes me think that that</p> <p>3 means that the sample was collected.</p> <p>4 <b>A. Within this time frame, it's being</b></p> <p>5 <b>collected, yes.</b></p> <p>6 Q. Okay. So this is a record when he</p> <p>7 gets the sample from her, he -- he types in or</p> <p>8 presses a button or something, and it says status</p> <p>9 updated from scheduled to collected, correct?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. All right. And then two lines down,</p> <p>12 January 13th, 2021, at 19:08, Floyd W. enters Panel</p> <p>13 added to Shipment - Finalize.</p> <p>14 Do you see that?</p> <p>15 <b>A. I do, yes.</b></p> <p>16 Q. What does that mean?</p> <p>17 <b>A. That means that that particular</b></p> <p>18 <b>specimen was added into a shipment, that shipment</b></p> <p>19 <b>was changed to be finalized. So all the specimens</b></p> <p>20 <b>that were collected that day at Services of</b></p> <p>21 <b>Esperanza were finalized in a shipment.</b></p> <p>22 Q. Okay. And then the next item, which</p> <p>23 is that same day, 19:09, or 7:09 p.m., the status</p> <p>24 is updated from collected to shipped. Does that</p> <p>25 mean that that is when the specimen was shipped to</p>                                    |

|   |  |
|---|--|
| <p>Page 161</p> <p>1 St. Louis?</p> <p>2 <b>A. Correct.</b></p> <p>3 Q. All right. And if we go down about</p> <p>4 three lines, we have -- we're two days later,</p> <p>5 January 15, 2021, at 8:38 a.m., and now the person</p> <p>6 who's entering it is T. Roberts.</p> <p>7 Do you see that?</p> <p>8 <b>A. Yep.</b></p> <p>9 Q. Who is T. Roberts?</p> <p>10 <b>A. She is a sessioner who received the</b></p> <p>11 <b>package and scanned that package in and changed it</b></p> <p>12 <b>from shipped to delivered at the laboratory.</b></p> <p>13 Q. Okay. And that -- and that's why</p> <p>14 the -- this item in the chain-of-custody document</p> <p>15 says status updated from shipped to delivered?</p> <p>16 <b>A. That is correct. Yes.</b></p> <p>17 Q. All right. And T. Roberts, is that</p> <p>18 Toshla Roberts?</p> <p>19 <b>A. Yes, it is.</b></p> <p>20 Q. And she's an employee at the</p> <p>21 laboratory in St. Louis?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. Has she ever been employed in</p> <p>24 Michigan?</p> <p>25 <b>A. No. Not that I'm aware of, I should</b></p>  | <p>Page 163</p> <p>1 <b>between the 13th and the 15th.</b></p> <p>2 Q. Why it was two days?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. Okay. Was that true both for when</p> <p>5 you were using FedEx and when you were using UPS?</p> <p>6 <b>A. Yes, there was daily -- there was</b></p> <p>7 <b>daily pickups --</b></p> <p>8 Q. Okay.</p> <p>9 <b>A. -- so they showed up at a specific</b></p> <p>10 <b>time frame.</b></p> <p>11 Q. So it should be -- it should arrive</p> <p>12 in St. Louis a day or perhaps two days after --</p> <p>13 after it was shipped; is that right?</p> <p>14 <b>A. Or on a weekend, it would be longer</b></p> <p>15 <b>than that.</b></p> <p>16 Q. Okay. So it could be maybe three</p> <p>17 days --</p> <p>18 MR. JENKINS: Whoa, whoa, whoa, whoa,</p> <p>19 whoa, whoa, whoa, whoa.</p> <p>20 <b>THE WITNESS: Are you okay?</b></p> <p>21 MR. CORNFELD: Let's go off the</p> <p>22 record.</p> <p>23 THE VIDEOGRAPHER: Time is 2:02. We</p> <p>24 are off the record.</p> <p>25 (A discussion was held off the</p>  |
| <p>Page 162</p> <p>1 <b>say.</b></p> <p>2 Q. Okay. Okay. And then at the bottom</p> <p>3 of the second page of the chain-of-custody document</p> <p>4 -- before I get to that.</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. How are items shipped from Michigan</p> <p>7 to the laboratory in St. Louis?</p> <p>8 <b>A. We were at FedEx and we moved to UPS,</b></p> <p>9 <b>and I don't remember the exact time frame. When we</b></p> <p>10 <b>started, specimens were shipped via the courier,</b></p> <p>11 <b>FedEx, and at some point in time, we changed from</b></p> <p>12 <b>FedEx to UPS.</b></p> <p>13 Q. And what kind of shipment was it?</p> <p>14 Was it overnight?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. So if it -- if it was shipped on</p> <p>17 Tuesday, it should arrive in St. Louis on</p> <p>18 Wednesday?</p> <p>19 <b>A. It is possible that it missed -- that</b></p> <p>20 <b>the person at the collection site basically closed</b></p> <p>21 <b>and had that package ready for be -- for pickup,</b></p> <p>22 <b>but it missed the pickup window, so it didn't ship</b></p> <p>23 <b>the next day.</b></p> <p>24 Q. Okay.</p> <p>25 <b>A. That's why you'd have the time frame</b></p> | <p>Page 164</p> <p>1 record.)</p> <p>2 THE VIDEOGRAPHER: The time is</p> <p>3 2:03 p.m. We are back on the record.</p> <p>4 Q. (BY MR. CORNFELD) Okay. Go ahead.</p> <p>5 <b>A. I answered the question. I said it</b></p> <p>6 <b>could be more than three days if it was collected</b></p> <p>7 <b>on a Friday.</b></p> <p>8 Q. Saturday, Sunday -- strike that.</p> <p>9 Did you have deliveries over the</p> <p>10 weekend on Saturday or Sunday?</p> <p>11 <b>A. We did not.</b></p> <p>12 Q. Okay. So it could be Saturday,</p> <p>13 Sunday, Monday, so three days?</p> <p>14 <b>A. A sample that's collected on Friday</b></p> <p>15 <b>that missed the shipment would get picked up on</b></p> <p>16 <b>Monday and delivered on Tuesday.</b></p> <p>17 Q. Okay. So four days, could be four</p> <p>18 days?</p> <p>19 <b>A. Typically.</b></p> <p>20 Q. Okay. If you look at the last item</p> <p>21 on the second page of the chain-of-custody document</p> <p>22 in Exhibit 18, do you see that this item says</p> <p>23 status updated from Delivered to Box?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. What does that mean?</p> |

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1 **A. That it was placed in position B5 in**  
2 **the actual box.**  
3 Q. What is position B5?  
4 **A. In this batch, right, all of our --**  
5 **all of our -- all of our -- once the samples are**  
6 **received and going through the accessioning**  
7 **process, they're going to go inside a batch so you**  
8 **know what place within the trier -- in the case**  
9 **of -- these are oral fluid samples, correct? So**  
10 **you have a box, so it's showing you that it was in**  
11 **slot B5. So if you think about it, it goes -- if**  
12 **you had a box with slots in it, it goes A, B, C, D,**  
13 **E, F, and one, two, three, four, five. So this**  
14 **particular sample was placed in a box in slot B5.**  
15 Q. Okay. And what is -- and B5 is?  
16 **A. It's just a holding place in a box so**  
17 **we know where that sample was put inside that box.**  
18 Q. But that's the second-to-last item on  
19 the second page of the chain-of-custody document,  
20 correct? Where it says batch position updated to  
21 B5?  
22 **A. Yes.**  
23 Q. All right. What does it mean to be  
24 in a box?  
25 **A. So you have your original oral fluid**

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1 **container, right? And then you also have your**  
2 **batches. So we -- the -- within a batch, you're**  
3 **going to have a portion of that sample.**  
4 **So throughout the entire testing**  
5 **process, we keep the original container, and then**  
6 **we're going to pour off portions what are called**  
7 **aliquots for -- that is what then gets tested on**  
8 **the analyzer.**  
9 **So when you talk about a batch versus**  
10 **a box, the box is the -- is the actual original**  
11 **container, and then batches are going to be when**  
12 **we've poured off a portion of that and put it into**  
13 **testing.**  
14 Q. So does each specimen have its own  
15 box?  
16 **A. No. Within a given box, there's**  
17 **multiple specimens.**  
18 Q. Oh. All from -- all from the same  
19 batch or all to -- that will become part of the  
20 same batch?  
21 **A. Yes.**  
22 Q. And a batch is simply a -- a  
23 collection of specimens that are tested together,  
24 correct?  
25 **A. Correct.**

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1 Q. If you could go to the page that --  
2 you may not be able to read it on the bottom, but  
3 it's number 10161 [sic]. At the top of the page,  
4 it says: Overall result updated from quote mark to  
5 POS.  
6 Do you have that page?  
7 **A. Yes.**  
8 Q. The third item down, this is by  
9 kkelly@averhealth. I assume that's an --  
10 **A. Okay.**  
11 Q. -- Averhealth technician?  
12 **A. Then I'm -- I apologize. You said**  
13 **10161?**  
14 Q. 6-0, I'm sorry.  
15 **A. 6-0. Thank you. I was looking at**  
16 **6-1.**  
17 Q. If you -- kkelly, is she a  
18 technician, or was she a technician at Averhealth?  
19 **A. I believe so.**  
20 Q. Okay. And the -- the third item on  
21 that page, it says: IsReportedFromLab updated to  
22 True.  
23 Do you see that?  
24 **A. Yes.**  
25 Q. What does that mean?

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1 **A. That means the data is coming back.**  
2 **So this is the initial amino assay test, so data is**  
3 **coming back off of the analyzer through the DI. So**  
4 **the DI is the -- the pipeline, I guess, that takes**  
5 **results of off our screening analyzers and pushes**  
6 **it into our database.**  
7 Q. What does "true" mean, looking at the  
8 third item on this page?  
9 **A. That -- yes, it was that that event**  
10 **happened.**  
11 Q. That -- that what happened?  
12 **A. That the data's coming through. So**  
13 **you look here on -- on -- it says so:**  
14 **IsReportedFromLab updated from to true. So it's**  
15 **saying yes, true. That they've pushed a button.**  
16 Q. And -- and what's true?  
17 **A. That they've pushed the button for**  
18 **that action.**  
19 Q. For which action?  
20 **A. Well, in this case, kkelly said:**  
21 **Overall result updated to positive. This is a**  
22 **screening result.**  
23 Q. All right. I've seen, not on this  
24 data pack, but I've seen chain of custody documents  
25 where it says false. What -- what would false

|  |   |
|--|---|
| <p>1 mean?</p> <p>2 <b>A. I'd have to look at it to -- to know.</b></p> <p>3 Q. All right. What -- what does DI</p> <p>4 stand for?</p> <p>5 <b>A. It is the program Data Innovations</b></p> <p>6 <b>that transfers the results from the screening</b></p> <p>7 <b>analyzer back into our LIS Aversys.</b></p> <p>8 Q. You -- did you say translates?</p> <p>9 <b>A. Transfers.</b></p> <p>10 Q. Transfers? Okay.</p> <p>11 <b>A. So you have to get results from the</b></p> <p>12 <b>analyzer -- sorry, it's really hard for me. You</b></p> <p>13 <b>have to get the results from the analyzer back into</b></p> <p>14 <b>the database. So the data's being transferred</b></p> <p>15 <b>through a program called Data Innovations, or DI.</b></p> <p>16 Q. Okay. And what does LIS stand for?</p> <p>17 <b>A. Laboratory Information System.</b></p> <p>18 Q. That's Aversys?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. If you look further down the page,</p> <p>21 there's an entry that says: PickingListBoxPosition</p> <p>22 updated to H4.</p> <p>23 Do you see that?</p> <p>24 <b>A. I do.</b></p> <p>25 Q. What does "picking list" mean?</p>   | <p>Page 169</p> <p>1 <b>probation officer asked for the test.</b></p> <p>2 Q. Okay. That's not Michigan, though,</p> <p>3 right?</p> <p>4 <b>A. That's not Michigan, no, but you</b></p> <p>5 <b>asked generally what this meant --</b></p> <p>6 Q. Yeah, I understand. I understand.</p> <p>7 <b>A. -- so I'm answering the question as</b></p> <p>8 <b>you asked.</b></p> <p>9 Q. Right. I understand. So in -- in</p> <p>10 Michigan, the picking list would be a list of</p> <p>11 specimens that have tested positive on the first</p> <p>12 amino assay screen and are then going to go further</p> <p>13 into a confirmation test, correct?</p> <p>14 <b>A. In this data pack, yes.</b></p> <p>15 Q. Okay. And -- and that's the process</p> <p>16 for Michigan, correct?</p> <p>17 <b>A. It -- it -- it was not always the</b></p> <p>18 <b>process for Michigan.</b></p> <p>19 Q. After the change in November of 2020?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. So in what we've been looking at,</p> <p>22 Exhibit 18, the -- the chain-of-custody document --</p> <p>23 <b>A. Uh-huh.</b></p> <p>24 Q. -- does this show how it -- how it is</p> <p>25 supposed to work, or is this how it is supposed to</p>          |
| <p>Page 170</p> <p>1 <b>A. Because the specimen was positive,</b></p> <p>2 <b>we're going to pull out the positives and separate</b></p> <p>3 <b>them from the negatives. So it gets on a picking</b></p> <p>4 <b>list for us to go back to that specimen and pull it</b></p> <p>5 <b>from the initial batch and put it into now what's</b></p> <p>6 <b>called a positive batch -- a positive box, sorry.</b></p> <p>7 Q. Is that -- I've also seen the term</p> <p>8 "pick list."</p> <p>9 <b>A. Uh-huh.</b></p> <p>10 Q. Is that just another term for picking</p> <p>11 list?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. And does that refer to a list of</p> <p>14 specimens that have tested positive on the amino</p> <p>15 assay? In other words, the first screening part of</p> <p>16 the test and are then going to go through the</p> <p>17 confirmation process?</p> <p>18 <b>A. Either to be rescreened, yes, or to</b></p> <p>19 <b>go through a confirmation process.</b></p> <p>20 Q. Why would they be rescreened?</p> <p>21 <b>A. We have many contracts where they</b></p> <p>22 <b>don't want us to do confirmation testing up front.</b></p> <p>23 <b>They want us to do an amino assay screen, and if</b></p> <p>24 <b>positive, rescreen it and report those test</b></p> <p>25 <b>results. And only do confirmations when the</b></p> | <p>Page 172</p> <p>1 work?</p> <p>2 <b>A. Can you be more specific in your</b></p> <p>3 <b>question?</b></p> <p>4 Q. We've looked and seen that there are</p> <p>5 contemporaneous records for when the person -- in</p> <p>6 this case, Mrs. Padilla -- entered the collection</p> <p>7 site and when the collection occurred, when the</p> <p>8 shipment occurred, when it was received in</p> <p>9 St. Louis. We haven't looked at everything, but</p> <p>10 also when the test was done, when it was reported</p> <p>11 back as positive, and so forth.</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. And -- and so that's how it's</p> <p>14 supposed to work; is that right?</p> <p>15 <b>A. That's a very broad question. I</b></p> <p>16 <b>still don't quite understand what you're trying to</b></p> <p>17 <b>ask me. I mean, I'm not trying to be difficult, I</b></p> <p>18 <b>don't understand the question.</b></p> <p>19 Q. I mean the chain of custody is</p> <p>20 supposed to show all of these things --</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. -- on a contemporaneous basis?</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. And that's what you -- what you</p> <p>25 create in order to have defensible test results in</p> |



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1 a court of law --

2 **A. Yes.**

3 Q. -- correct?

4 **A. Thank you.**

5 Q. I've handed you what's been marked as

6 Exhibit 19, which is a document with the number

7 4769 on the first page entitled: S Padilla data

8 pack with an accession number and the collection

9 date 10/28/21.

10 Do you see that?

11 **A. Yes.**

12 Q. And S. Padilla is Stephen Padilla,

13 who was Tiffani Padilla's husband. And if we look

14 at the second page at the lab report, do you see

15 that this -- this test was scheduled on 10/28/2021,

16 and the collection date is the same as it shows on

17 the first page of the data pack?

18 **A. Yes.**

19 Q. And the -- it was collected at

20 Catholic Charities of West Michigan?

21 **A. Yes.**

22 Q. If you would look at the

23 chain-of-custody document, which is page 4772, do

24 you see that the first item on the chain-of-custody

25 document is November 5th, 2021?

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1 **A. Yes.**

2 Q. It says: Panel Created: Walk-In.

3 **A. Yes.**

4 Q. And that was entered by Toshla

5 Roberts?

6 **A. Yes.**

7 Q. And that was actually a week after

8 the collection actually occurred, wasn't it?

9 **A. Yes.**

10 Q. And there's no record of anything

11 that occurred in connection with the collection of

12 this shipment in Michigan, correct?

13 **A. That is correct.**

14 Q. Toshla Roberts was an employee at the

15 laboratory in St. Louis, and therefore couldn't

16 have created a contemporaneous record of the

17 walk-in, correct?

18 **A. This would be one that wasn't started**

19 **as an electronic chain and must have come with a**

20 **piece of paper.**

21 Q. Whether it came in as a piece of

22 paper or not --

23 **A. Uh-huh.**

24 Q. -- Toshla Roberts wrote that walk-in

25 occurred on November 5th, and it did not, correct?

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1 **A. She checked it into the system on**

2 **November 5th because the sample -- the sample**

3 **arrived at the laboratory on November 5th.**

4 Q. Where -- where are the pieces of

5 paper that you say must have recorded that part of

6 the chain of custody that occurred in Michigan?

7 **A. We don't store those electronically,**

8 **so by the time we pulled this record, we would not**

9 **have had that paper documentation anymore.**

10 Q. What happened to it?

11 **A. We have a retention of two years, so**

12 **it would have been discarded after that time frame.**

13 Q. So the -- the test was done on

14 November 9th, 2021, so that would have been

15 November 9th 2023?

16 **A. Yes.**

17 Q. It was thrown away then?

18 **A. Yes, that would have been our storage**

19 **time frame for it, two years.**

20 Q. You know this lawsuit was pending in

21 November of 2023?

22 **A. Okay.**

23 Q. Do you know that?

24 **A. Yes.**

25 Q. So why did you throw away documents

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1 related to a test that was at issue in this lawsuit

2 while the lawsuit was pending?

3 **A. It was not done on purpose.**

4 Q. You threw something away by accident?

5 I mean, didn't you purposefully throw it away?

6 **A. It would have been with records that,**

7 **you know, due to our retention time frame, that we**

8 **would have discarded.**

9 Q. You know before then, we requested

10 all documents related to this test, correct?

11 **A. Yes.**

12 Q. And rather than produce them to us so

13 that we could review it and check to see if the

14 chain of custody creates a legal defensible record,

15 you threw it away?

16 **A. Yes.**

17 Q. And then said that we have everything

18 that an expert needs to determine whether the test

19 is valid; is that right?

20 **A. Yes.**

21 Q. And you know that's not true, is it?

22 Because an expert would need to review the chain of

23 custody to determine that the test was valid,

24 correct?

25 **A. We have the information from the time**

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1 the specimen was received at the laboratory.  
2 Q. My question is --  
3 A. I -- I understand your question.  
4 What we have is from the time that the specimen was  
5 received at the laboratory.  
6 Q. I know that.  
7 A. Okay.  
8 Q. An expert would need to review the  
9 chain of custody beginning when the person walked  
10 into the collection site in Michigan in order to  
11 determine that the test was valid, correct?  
12 A. What we can show --  
13 Q. Excuse me.  
14 A. Yes, I know, I've heard your  
15 question.  
16 Q. Wouldn't an expert need to review  
17 that, just like you reviewed it at the time, or you  
18 say you reviewed it at the time?  
19 A. Well, we --  
20 MR. CEJAS: Objection. Again, it  
21 calls for speculation as to what an expert would  
22 require.  
23 But subject to that, go ahead.  
24 THE WITNESS: Sure. So what we have  
25 is what we documented from the time that the

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1 specimen was received at the laboratory within our  
2 database.  
3 Q. (BY MR. CORNFELD) Doesn't an expert  
4 need to review the entire chain of custody from the  
5 time that the person entered the facility in  
6 Michigan to when the test was -- the sample was  
7 collected and what happened with the sample at the  
8 collection site and when it was shipped?  
9 MR. CEJAS: Same objection.  
10 Go ahead.  
11 THE WITNESS: What we've documented  
12 is from the time of --  
13 Q. (BY MR. CORNFELD) I understand what  
14 you've documented.  
15 A. No, I don't think that -- no, I don't  
16 think an expert has to have all that information.  
17 Q. You had that information when you  
18 reviewed and approved the test, right?  
19 A. And we would have documented if  
20 any --  
21 Q. Excuse me --  
22 A. Yes.  
23 Q. -- you had --  
24 A. Yes. Yes, we did.  
25 Q. You had it when --

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1 A. Yes, we did. And we would have  
2 documented anything that was unusual with the  
3 specimen and not tested it had we seen that the  
4 chain of custody was broken.  
5 Q. Well, you could have said that about  
6 everything in the test and said, well, we  
7 documented that everything was on the up-and-up,  
8 we're only giving you the results, we're not giving  
9 you the test data.  
10 You know that an expert needs to  
11 review all the test data, just like you did, in  
12 order to verify whether the test was done properly,  
13 correct?  
14 MR. CEJAS: Objection. Asked and  
15 answered.  
16 Go ahead again.  
17 THE WITNESS: Yeah, our standard  
18 operating procedures would be that when the  
19 specimen was received and checked in by Toshla  
20 Roberts, if the seal was not intact or anything  
21 that made sure that we could not defend these test  
22 results, we would have rejected that sample and  
23 reported it as rejected for whatever reason, and  
24 not continued with the testing.  
25 Q. (BY MR. CORNFELD) And so any other

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1 expert just has to take your word for it and can't  
2 see the same data you saw. Is that your testimony?  
3 A. We can testify to --  
4 Q. Excuse me. Is that --  
5 A. -- based on our standard operating --  
6 Q. -- your testimony that -- that any  
7 other expert must simply take your word for it,  
8 just like they maybe could have taken your word for  
9 the fact that this is the result you got without  
10 reviewing the underlying data?  
11 MR. CEJAS: Object to the form.  
12 Argumentative.  
13 Go ahead.  
14 THE WITNESS: What I can say is that  
15 we have standard operating procedures that if the  
16 sample didn't come intact, we would have rejected  
17 it and not tested it.  
18 Q. (BY MR. CORNFELD) We'll get to that.  
19 A. Okay.  
20 Q. We'll get to the fact that you didn't  
21 take photographs of the samples as your -- as your  
22 sample litigation package shows. I'm talking about  
23 what happened in Michigan.  
24 A. Understood.  
25 Q. Okay.

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| <p>Page 181</p> <p>1 MS. KINSEY: Rick, can I just ask a<br/>2 clarifying question? Is this -- which succession<br/>3 is this? Because he had two tests that same day.<br/>4 MR. CORNFELD: This is 16636898011.<br/>5 MS. KINSEY: Okay.<br/>6 MR. CORNFELD: It's 4769.<br/>7 Q. (BY MR. CORNFELD) And don't you<br/>8 think the jury ought to be entitled to review the<br/>9 chain of custody documents?<br/>10 <b>A. We don't have it, and what I can --</b><br/>11 <b>what I can talk to is what our standard operating</b><br/>12 <b>procedures are, that we ensure that before we test</b><br/>13 <b>any specimen, that we -- that the sample's intact</b><br/>14 <b>and it moves on to testing.</b><br/>15 Q. My -- my question is: Don't you<br/>16 think the jury should be entitled to review what<br/>17 you reviewed, and say yes, you did it, or no, you<br/>18 didn't?<br/>19 MR. CEJAS: Object to the form.<br/>20 <b>THE WITNESS: We can attest to our</b><br/>21 <b>standard operating procedures, which is we don't --</b><br/>22 Q. (BY MR. CORNFELD) My question is:<br/>23 Shouldn't the jury --<br/>24 <b>A. I understand that. I've heard your</b><br/>25 <b>question.</b></p> | <p>Page 183</p> <p>1 answered.<br/>2 Q. (BY MR. CORNFELD) And the jury<br/>3 weighs the credibility of everybody. If you<br/>4 testify at trial, the jury will decide whether you<br/>5 are an honest person who is telling the truth or<br/>6 whether you are not an honest person who is not<br/>7 telling the truth. They will do that with our<br/>8 witnesses also. They'll do that with the Padillas.<br/>9 Shouldn't the jury get to look at the<br/>10 evidence to help them decide that question?<br/>11 MR. CEJAS: Same objections.<br/>12 <b>THE WITNESS: What we could talk to</b><br/>13 <b>is what we have, which is what I've indicated,</b><br/>14 <b>which we don't have the chain of custody anymore.</b><br/>15 <b>But what we do have is standard operating</b><br/>16 <b>procedures that we wouldn't have moved on with</b><br/>17 <b>testing without it.</b><br/>18 Q. (BY MR. CORNFELD) What -- what --<br/>19 what you don't have are the complete<br/>20 chain-of-custody records to ensure legal<br/>21 defensibility that a valid sample was collected<br/>22 appropriately, tested, and accurately reported as<br/>23 you said in your -- on your website, correct?<br/>24 <b>A. I disagree to the fact that we can</b><br/>25 <b>talk about -- and Toshla Roberts can testify that</b></p>              |
| <p>Page 182</p> <p>1 Q. Shouldn't the jury -- shouldn't -- I<br/>2 know you've heard it, you haven't answered it.<br/>3 Shouldn't the jury be entitled to look at those<br/>4 same documents?<br/>5 MR. CEJAS: Object to the form.<br/>6 Asked and answered. And --<br/>7 MR. CORNFELD: It's not been<br/>8 answered.<br/>9 Q. (BY MR. CORNFELD) Go ahead.<br/>10 <b>A. We can provide what our standard</b><br/>11 <b>operating procedures are to ensure that we would</b><br/>12 <b>not test a specimen that was not received intact.</b><br/>13 Q. I -- my question is --<br/>14 <b>A. Okay.</b><br/>15 Q. -- shouldn't -- are you going to tell<br/>16 the jury, sorry, you don't get to look at it<br/>17 because we destroyed the record?<br/>18 MR. CEJAS: Same objection.<br/>19 Argumentative.<br/>20 Go ahead.<br/>21 <b>THE WITNESS: We don't have it. Yes,</b><br/>22 <b>I would tell the jury we no longer have it.</b><br/>23 Q. (BY MR. CORNFELD) And shouldn't the<br/>24 jury be entitled to -- to look at it?<br/>25 MR. CEJAS: Objection. Asked and</p>  | <p>Page 184</p> <p>1 <b>she followed standard and would not have put a</b><br/>2 <b>specimen in testing that had a broken chain of</b><br/>3 <b>custody.</b><br/>4 Q. That's not the only issue about chain<br/>5 of custody, whether it was collected properly. I<br/>6 mean, it -- otherwise, you wouldn't maintain any<br/>7 records of what happened in Michigan, you'd just<br/>8 say oh, we got a -- we got a specimen, and there<br/>9 was -- there was no broken seal, but you keep<br/>10 records of what happened in Michigan for a reason.<br/>11 And that's because it is part of the chain of<br/>12 custody that, as you say on your website, ensures<br/>13 legal defensibility that a valid sample is<br/>14 collected, appropriately tested, and accurately<br/>15 reported, correct?<br/>16 <b>A. And that's what Toshla can testify to</b><br/>17 <b>is she was the one who received it and checked it</b><br/>18 <b>into the database.</b><br/>19 Q. What you don't have is the chain of<br/>20 custody that on your -- as you say on your website<br/>21 ensures legal defensibility that a valid sample was<br/>22 collected, appropriately tested, and accurately<br/>23 reported, correct?<br/>24 <b>A. No. We do. Because we have her</b><br/>25 <b>following our standard operating procedures and</b></p> |

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| <p style="text-align: right;">Page 185</p> <p><b>1 only putting in a specimen into testing that has</b></p> <p><b>2 not been tampered with, has a tamper seal onto it,</b></p> <p><b>3 and that the -- the information is -- is okay to</b></p> <p><b>4 test.</b></p> <p>5 Q. You -- your website doesn't say that</p> <p>6 the fact that we -- we received a sample and put it</p> <p>7 on for testing ensures legal defensibility that a</p> <p>8 valid sample is collected, appropriately tested,</p> <p>9 and accurately reported. You state: Chain of</p> <p>10 custody is preserved from sample collection and</p> <p>11 shipping through laboratory analysis and</p> <p>12 resulting -- results reporting, ensuring legal</p> <p>13 defensibility that a valid sample is collected,</p> <p>14 appropriately tested, and accurately reported.</p> <p>15 That's what you say, correct?</p> <p><b>16 A. Yes.</b></p> <p>17 Q. And you don't have that for</p> <p>18 Mr. Padilla's test? I'm showing --</p> <p><b>19 A. I disagree --</b></p> <p>20 Q. -- so you don't have --</p> <p><b>21 A. -- because if you read --</b></p> <p>22 Q. -- a chain --</p> <p><b>23 A. -- the beginning of that --</b></p> <p>24 Q. Wait.</p> <p><b>25 A. If -- I disagree. Because if you</b></p>                               | <p style="text-align: right;">Page 187</p> <p><b>1 it in and --</b></p> <p>2 Q. Excuse me, do you have a</p> <p>3 chain-of-custody document?</p> <p><b>4 A. We don't have the external chain of</b></p> <p><b>5 custody, no.</b></p> <p>6 Q. And that's the chain of custody</p> <p>7 preserved from sample collection and shipping,</p> <p>8 correct?</p> <p><b>9 A. I've answered this already.</b></p> <p>10 Q. That's what you mean -- that's what</p> <p>11 you mean by external chain of custody, correct?</p> <p><b>12 A. Correct. We don't have the external</b></p> <p><b>13 chain of custody anymore.</b></p> <p>14 Q. Okay. How are the documents</p> <p>15 destroyed that are part of the external chain of</p> <p>16 custody, if it comes in on paper?</p> <p><b>17 A. They're shredded.</b></p> <p>18 Q. Who does that?</p> <p><b>19 A. Our team on site or we use an</b></p> <p><b>20 external company who will come in and pick -- like,</b></p> <p><b>21 a document destruction company who will come in and</b></p> <p><b>22 pick them up and destroy them.</b></p> <p>23 Q. How often do they do that?</p> <p><b>24 A. I'm not sure. I'd have to clarify,</b></p> <p><b>25 but I can find out. I don't want to give</b></p>   |
| <p style="text-align: right;">Page 186</p> <p><b>1 read, based on our SOPs, we -- we had a sample that</b></p> <p><b>2 was appropriately collected, received at the</b></p> <p><b>3 laboratory, the laboratory technician ensured that</b></p> <p><b>4 we had a specimen that was testable based on our</b></p> <p><b>5 standard operating procedures, she'll put it into</b></p> <p><b>6 testing.</b></p> <p>7 Q. You don't -- for -- for the test in</p> <p>8 Exhibit 19, you don't have a chain of custody</p> <p>9 preserved from sample collection and shipping</p> <p>10 through laboratory analysis and results reporting,</p> <p>11 correct?</p> <p>12 MR. CEJAS: Objection, asked and</p> <p>13 answered.</p> <p>14 Go ahead again.</p> <p><b>15 THE WITNESS: I disagree.</b></p> <p>16 Q. (BY MR. CORNFELD) You don't have</p> <p>17 that chain of custody. The chain-of-custody</p> <p>18 document doesn't show anything from Michigan, does</p> <p>19 it?</p> <p><b>20 A. It shows that Toshla Roberts received</b></p> <p><b>21 the specimen, ensured that it was a valid specimen,</b></p> <p><b>22 and put it into testing.</b></p> <p>23 Q. Do you have a chain-of-custody</p> <p>24 document that shows sample collection and shipping?</p> <p><b>25 A. We have that Toshla Roberts checked</b></p> | <p style="text-align: right;">Page 188</p> <p><b>1 inaccurate information.</b></p> <p>2 Q. What's your best estimate?</p> <p><b>3 A. I honestly don't know because it's</b></p> <p><b>4 not something that I'm responsible for. I believe</b></p> <p><b>5 it's monthly, but I will confirm.</b></p> <p>6 Q. Why didn't Ms. Roberts record the</p> <p>7 collection date in -- in the chain-of-custody</p> <p>8 document in Exhibit 19?</p> <p><b>9 A. The way that the computer system</b></p> <p><b>10 works, that -- it's the time that she checked in.</b></p> <p><b>11 So she created that event, and then checking that</b></p> <p><b>12 into the database, it creates the collection page.</b></p> <p><b>13 Part of entering that into the system records the</b></p> <p><b>14 collection date. So that's how that date ends up</b></p> <p><b>15 on the report.</b></p> <p>16 Q. You're saying she transcribed it from</p> <p>17 the paper record --</p> <p><b>18 A. Yes.</b></p> <p>19 Q. -- that's now destroyed?</p> <p><b>20 A. Yes.</b></p> <p>21 Q. Handing you what's been marked as</p> <p>22 Exhibit 20, which is a document on which the first</p> <p>23 page is numbered 6745. This has the title:</p> <p>24 S Padilla data pack, with an accession number, and</p> <p>25 the collection date 8/31/21.</p> |

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| <p>Page 189</p> <p>1 Do you have that?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. So this is another test by -- on</p> <p>4 Mr. -- on Mr. Padilla's specimen. This time when</p> <p>5 it was collected on August 31, '21. And if we look</p> <p>6 at the second page, the full-page lab report, do</p> <p>7 you see that the collection location was Catholic</p> <p>8 Charities West Michigan in Muskegon?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. And it shows a collection date of</p> <p>11 8/31/21, and it was collected by S.W.</p> <p>12 Do you see that?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. So S.W. would have been an employee</p> <p>15 of Catholic Charities of Western Michigan in</p> <p>16 Muskegon, Michigan?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. If you go to the chain-of-custody</p> <p>19 document, which is number 6748, do you see that the</p> <p>20 first item is September 8, 2021?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. Which is over a week after the sample</p> <p>23 that was collected on 8/31?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. And the person who's listed is</p> | <p>Page 191</p> <p>1 2021, did it?</p> <p>2 <b>A. It -- within the database, he's able</b></p> <p>3 <b>to find the prescheduled event that linked it to</b></p> <p>4 <b>the date of 8/31/2021.</b></p> <p>5 Q. But this says -- on the</p> <p>6 chain-of-custody document, it says it happened on</p> <p>7 September 8, 2021. And it didn't happen on that</p> <p>8 date, correct?</p> <p>9 <b>A. This says that that's the date that</b></p> <p>10 <b>he found that prescheduled event.</b></p> <p>11 Q. So again, this is not a</p> <p>12 contemporaneous record of the collection, is it?</p> <p>13 <b>A. This was entered on 9/8 for a</b></p> <p>14 <b>collection event that occurred on 8/31, yes.</b></p> <p>15 Q. And it was -- it was entered by</p> <p>16 Mr. Grim, who had nothing do with the collection,</p> <p>17 correct?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. And the date September 8th, 2021,</p> <p>20 couldn't have been the date of collection because</p> <p>21 that was also the date that the test was done in</p> <p>22 St. Louis, and it couldn't have possibly been</p> <p>23 collected on the same day it's tested in St. Louis,</p> <p>24 correct?</p> <p>25 <b>A. On the full page lab report, it shows</b></p> |
| <p>Page 190</p> <p>1 M. Grim. Who is that?</p> <p>2 <b>A. That is one of our accessioners at</b></p> <p>3 <b>the laboratory, Marlo Grim.</b></p> <p>4 Q. All right. So he's also an employee</p> <p>5 in St. Louis?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. So he had -- he made these entries in</p> <p>8 St. Louis, correct?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. And we have nothing in the</p> <p>11 chain-of-custody document from what happened with</p> <p>12 this specimen in Michigan, correct?</p> <p>13 <b>A. Correct.</b></p> <p>14 Q. And if we look at the second page of</p> <p>15 the chain-of-custody document, this is page 6749.</p> <p>16 You see this is September 8, 2021. And again, it's</p> <p>17 by M. Grim?</p> <p>18 <b>A. Uh-huh.</b></p> <p>19 Q. Do you see that?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. And this time, it says: Status</p> <p>22 updated from PreScheduled to Collected.</p> <p>23 Do you see that?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. That did not happen on September 8th,</p>  | <p>Page 192</p> <p>1 <b>that the collection date was 8/31/2021.</b></p> <p>2 Q. I'm talking about the -- what's shown</p> <p>3 on the chain-of-custody document.</p> <p>4 <b>A. That's showing when it got entered</b></p> <p>5 <b>into the computer system, but the event that was</b></p> <p>6 <b>picked, which shows the correct collection date, is</b></p> <p>7 <b>8/31/2021.</b></p> <p>8 Q. And -- and is it your testimony that</p> <p>9 the chain of custody in Michigan was recorded on</p> <p>10 paper and sent to St. Louis?</p> <p>11 <b>A. Yes.</b></p> <p>12 Q. For a test on August 31, 2021,</p> <p>13 meaning it was destroyed on -- the paper</p> <p>14 chain-of-custody record would have been destroyed</p> <p>15 on August 31, 2023?</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. Again, after we had requested this?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. Have you -- have you seen the paper</p> <p>20 chain of custody for either of the tests we've</p> <p>21 talked about?</p> <p>22 <b>A. I personally have not, no.</b></p> <p>23 Q. Do you know if anybody has after the</p> <p>24 test was reported?</p> <p>25 <b>A. After the test was reported, I don't</b></p>   |



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| <p style="text-align: right;">Page 193</p> <p>1 <b>know.</b></p> <p>2 Q. I'd like you to assume that we found</p> <p>3 18 data packs on Plaintiffs' tests in which the</p> <p>4 earliest date in the chain of custody, in the</p> <p>5 chain-of-custody document was after the collection</p> <p>6 date on the lab report.</p> <p>7 <b>A. Okay.</b></p> <p>8 Q. And that in none of those cases was</p> <p>9 there any entry in the chain-of-custody document by</p> <p>10 the person who did the collecting according to the</p> <p>11 lab report.</p> <p>12 <b>A. Okay.</b></p> <p>13 Q. And that no entry in the</p> <p>14 chain-of-custody document corresponds to the</p> <p>15 collection date in the lab report.</p> <p>16 <b>A. Okay.</b></p> <p>17 Q. And that's out of 114 data packs.</p> <p>18 <b>A. Okay.</b></p> <p>19 Q. Actually, they're all from Michigan</p> <p>20 because they're all third-party collectors. Is it</p> <p>21 your testimony that all of those would have been</p> <p>22 paper chains of custody from Michigan that</p> <p>23 Averhealth destroyed?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. And so out of 114 data packs</p>  | <p style="text-align: right;">Page 195</p> <p>1 Q. My question was only --</p> <p>2 <b>A. Yes, we do not have the external</b></p> <p>3 <b>chain of custody.</b></p> <p>4 Q. For 16 percent of the tests in this</p> <p>5 case, correct?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. No contemporaneous chain-of-custody</p> <p>8 record --</p> <p>9 <b>A. It's not contemporaneous --</b></p> <p>10 Q. Excuse me. No --</p> <p>11 <b>A. We don't have the external</b></p> <p>12 <b>chain-of-custody form.</b></p> <p>13 Q. Which are the external -- which are</p> <p>14 the contemporaneous -- contemporaneous records of</p> <p>15 what happened to the samples in Michigan, correct?</p> <p>16 <b>A. No. Because we've started the</b></p> <p>17 <b>contemporaneous chain of custody when the sample's</b></p> <p>18 <b>received at the laboratory.</b></p> <p>19 Q. My -- my question is: You don't have</p> <p>20 the original chain-of-custody record that provides</p> <p>21 a contemporaneous record of what happened to the</p> <p>22 samples in Michigan, correct?</p> <p>23 <b>A. We have --</b></p> <p>24 Q. Is that right?</p> <p>25 <b>A. I've already said we don't have the</b></p>  |
| <p style="text-align: right;">Page 194</p> <p>1 altogether, and that includes the ones outside</p> <p>2 Michigan, from Massachusetts and Arizona, that</p> <p>3 comes to 16 percent of the tests on these</p> <p>4 plaintiffs where Averhealth destroyed the</p> <p>5 contemporaneous chain-of-custody records showing</p> <p>6 what happened to the samples from the time the</p> <p>7 plaintiff showed up to give his or her sample to</p> <p>8 when it was shipped to the lab, correct?</p> <p>9 <b>A. I don't know about that -- I disagree</b></p> <p>10 <b>with that statement from the fact that I'd already</b></p> <p>11 <b>indicated that we, in our standard operating</b></p> <p>12 <b>procedures, when the specimen is received in the</b></p> <p>13 <b>laboratory and our team is checking in those</b></p> <p>14 <b>samples, they're going to check and ensure that the</b></p> <p>15 <b>sample is testable and that chain of custody has</b></p> <p>16 <b>not been destroyed, and they start that record</b></p> <p>17 <b>at -- at -- from that point in time.</b></p> <p>18 Q. My question --</p> <p>19 <b>A. I -- I do agree that we don't have</b></p> <p>20 <b>the external chain of custodies anymore. Yes, I'm</b></p> <p>21 <b>not disputing that.</b></p> <p>22 Q. That was all --</p> <p>23 <b>A. We don't have that.</b></p> <p>24 Q. -- my question was.</p> <p>25 <b>A. Okay.</b></p> | <p style="text-align: right;">Page 196</p> <p>1 <b>external -- I've -- I've already said we don't have</b></p> <p>2 <b>the external.</b></p> <p>3 Q. Okay. And that's the -- that was</p> <p>4 what was written down at the time the events</p> <p>5 occurred, correct?</p> <p>6 <b>A. Yes.</b></p> <p>7 MR. CORNFELD: How long have we been</p> <p>8 going?</p> <p>9 MR. CEJAS: Probably about -- it's</p> <p>10 over an hour for sure. So if now is a good time to</p> <p>11 take a break.</p> <p>12 MR. CORNFELD: Yeah, yeah.</p> <p>13 THE VIDEOGRAPHER: Time is 2:42 p.m.</p> <p>14 We are off the record.</p> <p>15 (A short break was taken.)</p> <p>16 THE VIDEOGRAPHER: The time is 3:03.</p> <p>17 We are back on the record.</p> <p>18 Q. (BY MR. CORNFELD) I want to go back</p> <p>19 to what you said about what Mrs. Padilla might have</p> <p>20 done to that water bottle. You said she might have</p> <p>21 injected fentanyl into the bottle, and I wanted to</p> <p>22 talk to you about how that could possibly be done.</p> <p>23 <b>A. I don't know. I don't know how. I</b></p> <p>24 <b>know that a sample was collected, as I had</b></p> <p>25 <b>indicated, was shipped, received at the laboratory,</b></p> |

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| <p style="text-align: right;">Page 197</p> <p><b>1 we tested it both by an amino assay and an LC-MS</b></p> <p><b>2 and found fentanyl.</b></p> <p>3 Q. Okay. My -- my question is --</p> <p><b>4 A. The specimen that we received. I</b></p> <p><b>5 don't know about the water bottle, I have no idea</b></p> <p><b>6 what happened with the water bottle, but the</b></p> <p><b>7 specimen that arrived at our laboratory, that's</b></p> <p><b>8 what we found.</b></p> <p>9 Q. I know that's what you're saying.</p> <p><b>10 A. Yes.</b></p> <p>11 Q. I want to go into how you could</p> <p>12 possibly inject fentanyl into a water bottle and</p> <p>13 result in a -- in a positive test at Averhealth.</p> <p>14 So first, you'd have to find a needle</p> <p>15 that could inject something into a water bottle, a</p> <p>16 needle that would be capable of going through the</p> <p>17 plastic of the water bottle.</p> <p>18 Do you have any idea how you would</p> <p>19 find out what kind of a needle that would be?</p> <p><b>20 A. I don't know.</b></p> <p>21 Q. And then you'd have to figure out how</p> <p>22 much fentanyl to inject into the water bottle so</p> <p>23 that you would -- assuming you were dishonest</p> <p>24 enough to do that -- so that you were going to end</p> <p>25 up with a result that was over the cutoff, but not</p> | <p style="text-align: right;">Page 199</p> <p><b>1 the laboratory screened positive and confirmed</b></p> <p><b>2 positive for fentanyl.</b></p> <p>3 Q. All right. But I -- we're talking</p> <p>4 about it because you raised the possibility that</p> <p>5 she might have injected --</p> <p><b>6 A. I think you raised the possibility.</b></p> <p>7 Q. No, I asked you how it -- what --</p> <p><b>8 A. I think you said --</b></p> <p>9 Q. -- is a possible explanation.</p> <p><b>10 A. -- is it, well, then, did she put</b></p> <p><b>11 fentanyl into in the water bottle.</b></p> <p>12 Q. You -- you -- you --</p> <p><b>13 A. You asked.</b></p> <p>14 Q. The record will show.</p> <p><b>15 A. Okay.</b></p> <p>16 Q. The record will show. My</p> <p>17 recollection is -- because I hadn't event thought</p> <p>18 about injecting fentanyl into the water bottle.</p> <p>19 You raised the -- that as a possibility, and so I'm</p> <p>20 just trying to figure out how that could possibly</p> <p>21 be done.</p> <p><b>22 A. I'm pretty sure you made the</b></p> <p><b>23 statement, well, was there fentanyl in the water</b></p> <p><b>24 bottle? And then you asked, well, did you hear</b></p> <p><b>25 that it clicked? And I said I don't know how</b></p> |
| <p style="text-align: right;">Page 198</p> <p>1 so much that it would be an implausible result,</p> <p>2 like enough fentanyl to kill a rhinoceros. You'd</p> <p>3 have to figure out how much fentanyl to inject,</p> <p>4 correct?</p> <p><b>5 A. Sure.</b></p> <p>6 Q. Okay. How would you -- how would you</p> <p>7 go about trying to figure that out?</p> <p><b>8 A. I -- I don't know.</b></p> <p>9 Q. And -- and you're the -- you're the</p> <p>10 head of Averhealth.</p> <p><b>11 A. Okay.</b></p> <p>12 Q. How do you think Mrs. Padilla, who</p> <p>13 doesn't have even a college education, much less is</p> <p>14 a scientist, how do you think she would figure that</p> <p>15 out?</p> <p><b>16 A. I don't know.</b></p> <p>17 Q. And is fentanyl lighter or heavier</p> <p>18 than water?</p> <p><b>19 A. I don't know.</b></p> <p>20 Q. I mean --</p> <p><b>21 A. And I don't know if it can be put</b></p> <p><b>22 into a solution and dissolved. I mean, I -- I -- I</b></p> <p><b>23 don't know even why we're talking about the water</b></p> <p><b>24 bottle, right? At this point in time, what I've</b></p> <p><b>25 already indicated, the sample that was received at</b></p>  | <p style="text-align: right;">Page 200</p> <p><b>1 fentanyl might have gotten in the water bottle.</b></p> <p>2 Q. And then --</p> <p><b>3 A. That's how I recollect --</b></p> <p>4 Q. Okay. And then --</p> <p><b>5 A. -- the conversation occurred.</b></p> <p>6 Q. And I mean, we have a transcript.</p> <p><b>7 A. Okay.</b></p> <p>8 Q. You raised the possibility of an</p> <p>9 injection, and so that's why I'm asking you the</p> <p>10 question. If fentanyl was heavier than water, is</p> <p>11 there any way she could have gotten fentanyl on</p> <p>12 that swab that was shorter -- much shorter than</p> <p>13 that water bottle?</p> <p><b>14 A. I believe fentanyl could probably be</b></p> <p><b>15 dissolved into water.</b></p> <p>16 Q. You -- but you just told us you</p> <p>17 didn't know that.</p> <p><b>18 A. Okay. So then why are you asking the</b></p> <p><b>19 questions if I --</b></p> <p>20 Q. My question was --</p> <p><b>21 A. -- I don't know.</b></p> <p>22 Q. -- if you think it's heavier. Okay.</p> <p>23 You can't Google how to inject</p> <p>24 fentanyl into a water bottle so that you'll rig a</p> <p>25 fentanyl test or a drug test and find a plausible</p>  |

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1 amount of fentanyl in the --  
2 **A. Fentanyl, like other drugs, can be**  
3 **heated, liquefied, and injected into the vein.**  
4 Q. Right. But there was no vein in that  
5 water bottle, was there?  
6 **A. But it can be turned into liquid is**  
7 **my point.**  
8 Q. Okay.  
9 **THE WITNESS: Do you know that the**  
10 **camera's not up in the back? I don't know that it**  
11 **matters --**  
12 MR. CEJAS: He logged off.  
13 **THE WITNESS: Gotcha. So we don't**  
14 **have to look at me again, which is fine.**  
15 Q. (BY MR. CORNFELD) To save time, I'm  
16 not going to show you the next series of -- of data  
17 packs. But if I showed you the Tiffani Padilla  
18 data pack from June 11, 2020, that took seven days  
19 from the date of collection to when it was  
20 received, according to the chain of custody. It  
21 was collected June 11th and it was received in the  
22 lab June 18th.  
23 Do you have any explanation for how  
24 that could happen?  
25 **A. It could have not been shipped**

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1 **immediately upon collection.**  
2 Q. Because they missed the last delivery  
3 time, correct? That's what you've told us before.  
4 **A. That is a possibility, yes.**  
5 Q. Okay. And -- but that wouldn't take  
6 a week. You said that --  
7 **A. Not every location potentially ships**  
8 **every single day. One of the things that we've**  
9 **learned, we often saw in Michigan, that samples**  
10 **weren't necessarily shipped every single day.**  
11 (A discussion was held off the  
12 record.)  
13 **THE WITNESS: You gave me two**  
14 **highlighted.**  
15 MR. CORNFELD: Okay. Let me have  
16 them back.  
17 **THE WITNESS: They're not tabbed,**  
18 **though.**  
19 MR. CORNFELD: Right. This will be  
20 easy to find.  
21 (A discussion was held off the  
22 record.)  
23 **THE WITNESS: Thank you.**  
24 Q. (BY MR. CORNFELD) T. Padilla is  
25 which one?

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1 **A. T. Padilla is 21 and S. Padilla is**  
2 **22.**  
3 MR. PLEBAN: T. Padilla is 21, you  
4 said?  
5 **THE WITNESS: Yes.**  
6 Q. (BY MR. CORNFELD) I've handed you  
7 what have been marked as Exhibits 21 and 22. 21  
8 has the number 11369 on the front page. It's  
9 titled: T Padilla data pack with an accession  
10 number, and the collection day 12/3/21.  
11 And Exhibit 22 is titled: S. Padilla  
12 data pack with an accession number, and collection  
13 date 12/3/21.  
14 Do you have those?  
15 **A. Yes.**  
16 Q. All right. I'd like you to look at  
17 the full-page lab report.  
18 **A. On both?**  
19 Q. Okay. And do you see that both of  
20 those specimens were collected at the Services of  
21 Esperanza (Services of Hope) and collected on  
22 December 23rd, 2021.  
23 **A. Yes.**  
24 Q. And -- and the way it works, you've  
25 got a collection -- in the lab report, a collection

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1 date, a date received, a date reported, that's when  
2 the test result was reported; is that right?  
3 **A. Uh-huh.**  
4 Q. Correct?  
5 **A. Yes.**  
6 Q. And obviously, the date received,  
7 that's the date it was received in the laboratory,  
8 correct?  
9 **A. Yes.**  
10 Q. So that obviously has to be before  
11 the date reported, correct?  
12 **A. Yes.**  
13 Q. And do you see that in both of these  
14 instances, it says that the date received is  
15 December 9th, 2021, and the date reported was two  
16 days earlier?  
17 **A. Yes.**  
18 Q. December 7th, 2021?  
19 **A. Yes.**  
20 Q. That's false, isn't it?  
21 **A. Seems to be some sort of**  
22 **administrative error, yes. That is not accurate.**  
23 Q. All right. It can't have been --  
24 **A. Correct.**  
25 Q. -- reported before it was received,

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1 correct?

2 **A. Yes.**

3 Q. Shouldn't that be --

4 MR. PLEBAN: She just wrote on that.

5 MR. CORNFELD: What?

6 MR. PLEBAN: I think she wrote on

7 that again.

8 Q. (BY MR. CORNFELD) Did you write on

9 that exhibit?

10 **A. I'm sorry, I boxed the date. I boxed**

11 **the date received.**

12 Q. Okay. In which exhibit?

13 **A. On both. I boxed the date --**

14 Q. Okay.

15 **A. -- received on both of them.**

16 Q. Okay.

17 **A. Apologize.**

18 Q. Just so the record will reflect how

19 that got there.

20 This should be something pretty

21 simple to get right, shouldn't it?

22 **A. I'm trying to figure out how it**

23 **reflects that, so give me a minute. There must**

24 **have been a transcription error on the date**

25 **received because it clearly --**

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1 Q. Okay. But my --

2 **A. A transcription error on the date**

3 **received because clearly, on the chain of custody,**

4 **it shows received on the 7th.**

5 Q. Was this somebody who personally put

6 the date in or does it -- does it happen

7 automatically? Does it get transferred from one

8 place to the other?

9 **A. I don't know how that was there. I'd**

10 **need to do some research on it.**

11 Q. All right. But this should be

12 something pretty simple to get correct, shouldn't

13 it?

14 **A. There are times where if it's a human**

15 **error, that there might be a transcription where**

16 **somebody enters a date in incorrectly. It's not a**

17 **common occurrence, but it could happen.**

18 Q. Okay.

19 **A. But let me investigate this.**

20 Q. Okay. And we talked about other

21 things that ought to be pretty simple, like having

22 the correct cutoff levels in your proposals and

23 your contracts, that shouldn't be difficult to get

24 right, assuming that you got that wrong there,

25 correct?

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1 **A. Human error happens.**

2 Q. Okay. So my question is: If your

3 lab can't even get the easy stuff right, can you

4 see why somebody might be skeptical about whether

5 you get the hard stuff correct, meaning doing these

6 very complicated laboratory tests?

7 **A. There -- anything that is an**

8 **administrative error is a rare occurrence.**

9 Q. My question is: Can you see that --

10 I mean, we've been here less than a day and --

11 **A. All humans make mistakes, right? All**

12 **of us have certain things where we make an error.**

13 Q. Okay.

14 **A. And it's an isolated event that these**

15 **errors occur.**

16 Q. Can you see why somebody might think

17 if you make isolated errors on something that's

18 easy --

19 **A. No, I don't understand that.**

20 Q. -- it might be -- it might be -- that

21 it might be -- they might be -- skeptical about --

22 **A. No, I don't.**

23 Q. -- whether you --

24 COURT REPORTER: Can you --

25 Q. (BY MR. CORNFELD) Let me finish my

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1 question.

2 COURT REPORTER: Please.

3 Q. (BY MR. CORNFELD) Can you see why

4 somebody might be skeptical about whether if you

5 can't get the easy stuff right, that you're having

6 trouble, that you would have trouble getting the

7 hard stuff, meaning doing these complicated

8 laboratory tests, correct?

9 **A. No.**

10 Q. I have some questions I'd like to ask

11 about chromatographs of quality controls and

12 calibrators.

13 **A. Okay.**

14 Q. Are you the person to ask?

15 **A. I might be able to answer some of it**

16 **and some of it might be Dr. Glinn. Until I know**

17 **the question, I don't know that. Are you**

18 **comfortable with if you ask me something and I want**

19 **to defer it, that that's what we do?**

20 Q. I -- I would be comfortable deferring

21 the whole thing. I was going to start by asking

22 what is integration. What does that mean?

23 **A. Okay.**

24 Q. What does integration mean?

25 **A. Can you give a little more context?**

|  |  |
|--|--|
| <p style="text-align: right;">Page 209</p> <p><b>1 You're picking one word.</b></p> <p>2 Q. I know. I've seen that word a lot in</p> <p>3 Averhealth's documents. That's why I'm asking you.</p> <p><b>4 A. Okay. But normally, we don't just</b></p> <p><b>5 say the word "integration."</b></p> <p>6 Q. Well, I know --</p> <p><b>7 A. It's -- it's part of a broader</b></p> <p><b>8 sentence.</b></p> <p>9 Q. It would be in a sentence, but --</p> <p><b>10 A. Yes.</b></p> <p>11 Q. -- it would refer to the laboratory</p> <p>12 tests.</p> <p><b>13 A. Okay. Can you point me to one of</b></p> <p><b>14 them where it says integration?</b></p> <p>15 Q. I don't actually have it because it</p> <p>16 wasn't -- there was no modifier, like high</p> <p>17 integration, low integration, whatever. It was</p> <p>18 just integration in terms of the laboratory tests.</p> <p>19 If you can't answer it, that's fine. I'll defer it</p> <p>20 to Dr. Glinn.</p> <p><b>21 A. I'm not saying I can't. I can --</b></p> <p>22 Q. Okay.</p> <p><b>23 A. -- if you give me the full sentence</b></p> <p><b>24 where we used the term "integration." There's</b></p> <p><b>25 nowhere does it just say the word "integration."</b></p>                         | <p style="text-align: right;">Page 211</p> <p><b>1 A. Okay.</b></p> <p>2 Q. Acceptable peak integration is from</p> <p>3 trough to trough at the baseline, including</p> <p>4 fronting or tailing as appropriate.</p> <p><b>5 A. Okay.</b></p> <p>6 Q. What does integration mean?</p> <p><b>7 A. Integration is looking at the peak of</b></p> <p><b>8 that chromatograph, right, and ensuring that if</b></p> <p><b>9 there is a peak, that from point to point, as that</b></p> <p><b>10 indicated, is signaled or identified appropriately.</b></p> <p>11 Q. What -- what does the sentence</p> <p>12 integration of fronting or trailing -- excuse me.</p> <p>13 What does integration mean in the sentence from</p> <p>14 that same SOP, integration of fronting or trailing</p> <p>15 peaks shall be consistent with calibrator or</p> <p>16 control integration?</p> <p><b>17 A. That in that chromatograph, if there</b></p> <p><b>18 was tailing, if you're going to truncate that peak,</b></p> <p><b>19 right, or chop it off to get rid of the tailing,</b></p> <p><b>20 that what you do on this -- on the patient sample</b></p> <p><b>21 is going to be the same of what you do on the</b></p> <p><b>22 calibrators or the controls.</b></p> <p>23 Q. Okay. What is -- what is calibrator</p> <p>24 or control integration as used in that sentence?</p> <p><b>25 A. Can you read the sentence again?</b></p>                        |
| <p style="text-align: right;">Page 210</p> <p>1 Q. Tell me anything you know about the</p> <p>2 word, what the word "integration" means.</p> <p><b>3 A. I need more context.</b></p> <p>4 Q. Anything you know. Without context.</p> <p>5 You can tell me what you understand it to be</p> <p>6 without being prompted by a context.</p> <p><b>7 A. No, I can't.</b></p> <p>8 Q. Think of a context in which you would</p> <p>9 know what the word "integration" means.</p> <p><b>10 A. Can you ask me a question with a</b></p> <p><b>11 specific reason where you're talking about</b></p> <p><b>12 "integration"?</b></p> <p>13 Q. If I told you that integration was</p> <p>14 the determination of the height and the area of a</p> <p>15 peak in a chromatogram, would that ring a bell?</p> <p><b>16 A. The integration? That doesn't make</b></p> <p><b>17 sense.</b></p> <p>18 Q. Okay. I'll read you a sentence</p> <p>19 from -- from the LC-MS/MS quality control --</p> <p>20 THE VIDEOGRAPHER: I'm so sorry, sir.</p> <p><b>21 THE WITNESS: Your mic's --</b></p> <p>22 MR. CORNFELD: Oh, shoot.</p> <p>23 Q. (BY MR. CORNFELD) Let me read you a</p> <p>24 sentence from Averhealth's LC-MS/MS quality control</p> <p>25 SOP from January 2021.</p> | <p style="text-align: right;">Page 212</p> <p>1 Q. Integration of fronting or tailing</p> <p>2 peaks shall be consistent with calibrator or</p> <p>3 control integration.</p> <p><b>4 A. So in all of our batches in testing,</b></p> <p><b>5 right, when there's the calibrators and the</b></p> <p><b>6 controls within that batch, if you're going to do</b></p> <p><b>7 any kind of trunking or of -- sorry. If you're</b></p> <p><b>8 going to get rid of any tailing or fronting of it,</b></p> <p><b>9 that you're consistent with the patient samples as</b></p> <p><b>10 well as the controls or the calibrators.</b></p> <p>11 Q. So -- so integration there would be</p> <p>12 the same for the calibrators or controls as the</p> <p>13 patient samples, meaning looking at the peak on the</p> <p>14 chromatograph?</p> <p><b>15 A. Yes.</b></p> <p>16 Q. So you would have to have a</p> <p>17 chromatogram of the calibrated or -- and control in</p> <p>18 order to do that, correct?</p> <p><b>19 A. Help me with the context of where</b></p> <p><b>20 you're going with this. Like, yes, so when you're</b></p> <p><b>21 looking at a batch, you're going to ensure that</b></p> <p><b>22 you're going to have consistency in your controls</b></p> <p><b>23 and your patient samples and your calibrators.</b></p> <p>24 Q. Okay. So -- so you would look -- in</p> <p>25 order to interpret the test result, you would look</p> |



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1 at the chromatograms of the patient sample and of  
2 the calibrators and of the control, correct?  
3 **A. You would have valid calibrators --**  
4 **THE WITNESS: I lost mine. Sorry.**  
5 **You would have a valid -- a valid**  
6 **calibration curve, and then you'd have controls and**  
7 **patient samples, yes.**  
8 Q. (BY MR. CORNFELD) So you'd have the  
9 chromatograms of those, correct?  
10 **A. Yes.**  
11 Q. And you would -- you'd have to look  
12 at those in order to interpret the test result; is  
13 that right?  
14 **A. You have to have valid calibration,**  
15 **yes.**  
16 Q. And that means looking at the  
17 chromatograms of the calibrators and controls as  
18 well as at -- of the patient sample, correct?  
19 **A. Yes.**  
20 Q. You probably have handy Exhibit 21,  
21 the T. Padilla data pack.  
22 **A. Yes. If we're going to go down**  
23 **asking me to look at calibrators and controls,**  
24 **that's going to have to be deferred to Dr. Glinn.**  
25 Q. My -- my question was whether you

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1 could point to the chromatographs of calibrators or  
2 controls in the data pack.  
3 **A. If I remember correctly -- Colleen,**  
4 **correct me if I'm wrong -- so originally, we gave**  
5 **you the chart, which gave you the values --**  
6 Q. My --  
7 **A. -- off of it. Okay?**  
8 Q. My question is: Can you point me to  
9 calibrators or to -- to chromatographs of  
10 calibrators or controls in the Tiffani Padilla data  
11 pack?  
12 **A. I believe that was a supplemental**  
13 **request that we provided to you.**  
14 Q. I --  
15 **A. We originally give it to you in data**  
16 **format.**  
17 Q. Okay. You did not give us the  
18 chromatographs or controls. Those are not  
19 contained in the data packs, correct?  
20 **A. We gave you the table that had the**  
21 **results --**  
22 Q. My question --  
23 **A. Yes, you are correct. To answer your**  
24 **question, yes.**  
25 Q. Is it the case that Averhealth did

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1 not have chromatograms or chromatographs of  
2 calibrators and quality controls on any test  
3 reported as positive on any plaintiff at or near  
4 the time it conducted and reported the results of  
5 those tests?  
6 **A. Can you please repeat that question?**  
7 Q. I was reading from a request for  
8 admissions that we've served on Averhealth and that  
9 Averhealth admitted -- and that request for  
10 admission which Averhealth admitted was:  
11 Averhealth did not possess chromatograms or  
12 chromatographs of calibrators and quality controls  
13 on any test reported as positive on any plaintiff  
14 at or near the time it conducted and reported the  
15 results of those tests.  
16 That was the first part of the  
17 statement. Is that true?  
18 **A. No.**  
19 Q. That's not true?  
20 **A. That we did not have? You said that**  
21 **we did not have?**  
22 Q. That Averhealth did not possess  
23 chromatograms or chromatographs of calibrators and  
24 quality controls on any test reported as positive  
25 on any plaintiff at or near the time it conducted

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1 and reported the results of those tests.  
2 **A. Where is that from?**  
3 Q. That is from a request for admission  
4 that we asked Averhealth --  
5 **A. Okay. Can -- can you reference the**  
6 **document?**  
7 Q. You know, I thought I had it with me.  
8 We can get it tomorrow.  
9 MR. PLEBAN: I'll pull it up here.  
10 Let's just go off.  
11 THE VIDEOGRAPHER: The time is 3 --  
12 2 -- 3:29 p.m. We are off the record.  
13 (A discussion was held off the  
14 record.)  
15 THE VIDEOGRAPHER: Time is 3:29. We  
16 are back on the record.  
17 MR. CORNFELD: Oh, I had it in a  
18 different folder.  
19 THE VIDEOGRAPHER: I think the mic  
20 might have been a casualty again.  
21 **THE WITNESS: Every document**  
22 **containing data that it had on any --**  
23 MR. CEJAS: Just a second.  
24 MR. PLEBAN: Yeah, it is.  
25 Q. (BY MR. CORNFELD) Ms. Delagnes, I've

|  |  |
|--|--|
| <p style="text-align: right;">Page 217</p> <p>1 handed you what's been marked as Exhibit 23 --</p> <p>2 <b>A. Okay.</b></p> <p>3 Q. -- which is a document on the caption</p> <p>4 of this lawsuit titled Defendant Avertest, LLC,</p> <p>5 d/b/a Averhealth's Answers to Plaintiff's Second</p> <p>6 Set of Request for Admissions.</p> <p>7 Do you have that?</p> <p>8 <b>A. Yes.</b></p> <p>9 THE VIDEOGRAPHER: Can I have you</p> <p>10 clip your mic on?</p> <p>11 MR. CORNFELD: Oh.</p> <p>12 THE VIDEOGRAPHER: No, you're good.</p> <p>13 Q. (BY MR. CORNFELD) And do you see</p> <p>14 that this contains Averhealth's Answers to Requests</p> <p>15 for Admissions that Plaintiff asked Averhealth to</p> <p>16 admit?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. And Averhealth could admit it, if it</p> <p>19 was true; or deny it if it was not true?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. And if you would look at number 3 on</p> <p>22 page 2.</p> <p>23 <b>A. Okay.</b></p> <p>24 Q. It says -- as I was reading:</p> <p>25 Averhealth did not possess chromatograms or</p>   | <p style="text-align: right;">Page 219</p> <p>1 exhibit?</p> <p>2 MR. CORNFELD: I'm sorry?</p> <p>3 MR. CEJAS: Did we just mark that as</p> <p>4 an exhibit?</p> <p>5 <b>THE WITNESS: Yeah, 23.</b></p> <p>6 MR. CORNFELD: Yeah.</p> <p>7 Q. (BY MR. CORNFELD) What is a</p> <p>8 litigation package?</p> <p>9 <b>A. It's data that's put together that we</b></p> <p>10 <b>provide to our customers if they need it for</b></p> <p>11 <b>litigation package support.</b></p> <p>12 Q. And did you provide a sample</p> <p>13 litigation to Dr. Klette?</p> <p>14 <b>A. We did.</b></p> <p>15 Q. And that was in response to his</p> <p>16 request for the litigation package or the package</p> <p>17 of data that you would provide to courts on the</p> <p>18 tests that you conducted, correct?</p> <p>19 <b>A. It was in response to he wanted to</b></p> <p>20 <b>know what we would put together for him to do an</b></p> <p>21 <b>audit for us.</b></p> <p>22 Q. He specifically requested a document</p> <p>23 package for a specimen that is sent to court for</p> <p>24 trial prior to September 14, 2020, and after</p> <p>25 November 3rd, 2020, correct?</p>   |
| <p style="text-align: right;">Page 218</p> <p>1 chromatographs of calibrators and controls on any</p> <p>2 test reported as positive on any plaintiff at or</p> <p>3 near the time it conducted and reported the results</p> <p>4 of those tests. And let me stop there.</p> <p>5 Is that part of the statement true?</p> <p>6 <b>A. This is -- this is something</b></p> <p>7 <b>Dr. Glinn -- she knows this data so much better.</b></p> <p>8 <b>So -- I didn't mean to get this far, but I want to</b></p> <p>9 <b>table this question because she'd look at -- and</b></p> <p>10 <b>our team's looking at -- is used to looking at</b></p> <p>11 <b>data.</b></p> <p>12 Q. I'm sorry, what was the last part of</p> <p>13 what you said?</p> <p>14 <b>A. I said -- I said because they are the</b></p> <p>15 <b>ones who look at the data prior to reporting it, so</b></p> <p>16 <b>I want to leave this question to Dr. Glinn.</b></p> <p>17 Q. All right. Would the -- would the</p> <p>18 same be true for the second part of the statement,</p> <p>19 that Averhealth admitted that it did not possess</p> <p>20 such chromatograms or chromatographs until it</p> <p>21 created them in response to Plaintiffs' requests --</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. -- during this litigation?</p> <p>24 <b>A. Yes.</b></p> <p>25 MR. CEJAS: Did you mark that as an</p> | <p style="text-align: right;">Page 220</p> <p>1 <b>A. I didn't actually see his request.</b></p> <p>2 <b>I've never seen the request of what he -- like,</b></p> <p>3 <b>what -- what he requested, if he was that specific.</b></p> <p>4 <b>Thank you.</b></p> <p>5 Q. I've handed you what's been marked as</p> <p>6 Exhibit 24, which is a document, the first page of</p> <p>7 which has the Bates number 35319. And on the first</p> <p>8 page, this has an e-mail from Jason Herzog to you</p> <p>9 and Dr. Glinn dated August 11, 2022.</p> <p>10 Correct?</p> <p>11 <b>A. Yes.</b></p> <p>12 Q. And he says Kevin -- meaning</p> <p>13 Dr. Klette; is that right?</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. Would like to come on site for three</p> <p>16 days next week to review 150 samples. And he goes</p> <p>17 on.</p> <p>18 And Dr. Klette was coming on so that</p> <p>19 he could evaluate Averhealth's testing procedures</p> <p>20 and write a report to be submitted to investigators</p> <p>21 in Michigan, correct?</p> <p>22 <b>A. Not to Michigan. I believe it was to</b></p> <p>23 <b>the Department of Justice.</b></p> <p>24 Q. You're correct. But what I meant was</p> <p>25 to the U.S. attorney in Michigan.</p> |

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| <p>Page 221</p> <p>1 <b>A. Okay. Yes, that is correct.</b></p> <p>2 Q. All right. And then he attaches in</p> <p>3 this e-mail he's sent to you the information that</p> <p>4 Dr. Klette was requesting, correct?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. And if you would look at the</p> <p>7 second-to-last page, which is numbered 35323, do</p> <p>8 you see there's a heading: Laboratory information</p> <p>9 required prior to the inspection audit?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. And by "inspection audit," he means</p> <p>12 his inspection of Averhealth's practices that he</p> <p>13 was coming to the laboratory to do, correct?</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. And the first item is document</p> <p>16 package for a specimen that is sent to court for</p> <p>17 trial prior to September 14, 2020, and after</p> <p>18 November 3rd, 2020.</p> <p>19 Do you see that?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. So that is what Dr. -- Dr. Klette was</p> <p>22 requesting, and in response to which the sample</p> <p>23 litigation package was sent, correct?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. All right. And I -- you know, I'm</p> | <p>Page 223</p> <p>1 Q. All right. So this is an example of</p> <p>2 what Averhealth was sending to courts during the</p> <p>3 time period that Dr. Klette requested?</p> <p>4 <b>A. This is not. This is an outdated</b></p> <p>5 <b>document. As you can see, this was back in 2015.</b></p> <p>6 <b>So the person who sent it, the owner on this</b></p> <p>7 <b>document shows Courtney Clements, who was at the</b></p> <p>8 <b>time in charge of proposal writing, and so I don't</b></p> <p>9 <b>know why this is what she pulled.</b></p> <p>10 <b>Jason didn't ask neither Michele,</b></p> <p>11 <b>Dr. Glinn, or myself, for example, what was said</b></p> <p>12 <b>from court. And if you look at this document, all</b></p> <p>13 <b>of this was printed in 2015. This is not what we</b></p> <p>14 <b>were producing during this time frame. So this is</b></p> <p>15 <b>not an accurate litigation package of what we sent</b></p> <p>16 <b>to our customers today or what we were sending to</b></p> <p>17 <b>our customers in 2020.</b></p> <p>18 Q. All right. When did you stop using</p> <p>19 the sample litigation package, the documents based</p> <p>20 on Exhibit 20 -- 25?</p> <p>21 <b>A. I don't know the exact date.</b></p> <p>22 Q. Approximately.</p> <p>23 <b>A. I would say probably in 2016 or '17.</b></p> <p>24 Q. So is this another administrative</p> <p>25 error that somebody at Averhealth did?</p> |
| <p>Page 222</p> <p>1 puzzled over these dates, why he would want it</p> <p>2 before September 14, 2020, and after November 3rd,</p> <p>3 2020. Those are -- those are the dates when</p> <p>4 Dr. Riley was employed by Averhealth, correct?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. I wonder if that was his</p> <p>7 transcription error, and he really meant after</p> <p>8 September 24, 2020, and before November 3rd, 2020,</p> <p>9 so he would have it for the time that Dr. Riley was</p> <p>10 employed.</p> <p>11 MR. CEJAS: Objection to the extent</p> <p>12 it calls for speculation.</p> <p>13 But if you know, go ahead.</p> <p>14 Q. (BY MR. CORNFELD) Go ahead. Go</p> <p>15 ahead.</p> <p>16 <b>A. I don't know.</b></p> <p>17 Q. But in any event, in response, what</p> <p>18 was sent was a document entitled sample litigation</p> <p>19 package, correct?</p> <p>20 <b>A. Yes.</b></p> <p>21 <b>Thank you.</b></p> <p>22 Q. Handing you what's been marked as</p> <p>23 Exhibit 25. Is this the sample litigation package</p> <p>24 we're talking about?</p> <p>25 <b>A. Yes, it is.</b></p>   | <p>Page 224</p> <p>1 <b>A. Yes.</b></p> <p>2 Q. And something that would have been</p> <p>3 easy to get right, correct?</p> <p>4 <b>A. Should have been.</b></p> <p>5 Q. And she could have just sent</p> <p>6 something from an actual case and blacked out the</p> <p>7 identity of the individual, correct?</p> <p>8 <b>A. She could have.</b></p> <p>9 Q. In fact, that's what was done for</p> <p>10 Dr. Wagner, wasn't it?</p> <p>11 <b>A. I believe so.</b></p> <p>12 Q. We'll get to that.</p> <p>13 <b>A. Okay.</b></p> <p>14 Q. Unless that will get deferred for</p> <p>15 Dr. Glinn also.</p> <p>16 Let's look at the first page after</p> <p>17 the cover page.</p> <p>18 <b>A. Okay.</b></p> <p>19 Q. The cover page says: Averhealth</p> <p>20 sample litigation package.</p> <p>21 Correct?</p> <p>22 <b>A. Yes. And at the time of 2020, we</b></p> <p>23 <b>didn't even go by Avertest. We'd updated our name</b></p> <p>24 <b>to Averhealth. So this is an outdated document.</b></p> <p>25 Q. Okay. It has on the second page,</p>  |

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| <p>Page 225</p> <p>1 page numbered 38144, a letter to whom it may</p> <p>2 concern stating the information included in this</p> <p>3 litigation package has been reviewed and contains</p> <p>4 accurate and true copies of relevant data</p> <p>5 concerning the specimen in question.</p> <p>6 Correct?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. And it's signed Michele A. Glinn,</p> <p>9 PhD, laboratory director.</p> <p>10 Correct?</p> <p>11 MR. CEJAS: Let me object. Assumes</p> <p>12 facts not in evidence. I don't think that's</p> <p>13 signed.</p> <p>14 Subject to that, go ahead.</p> <p>15 Q. (BY MR. CORNFELD) It has a signature</p> <p>16 line for her?</p> <p>17 <b>A. It has a signature line, yes.</b></p> <p>18 Q. Thank you.</p> <p>19 MR. CORNFELD: I'm not going to say</p> <p>20 feel free to correct my questions, but I appreciate</p> <p>21 that one.</p> <p>22 Q. (BY MR. CORNFELD) There's no letter</p> <p>23 like this in the data packs that you produced on</p> <p>24 the plaintiffs' tests, is there?</p> <p>25 <b>A. No.</b></p>  | <p>Page 227</p> <p>1 Q. And that shows the titles and the</p> <p>2 names and whether they were employed of everyone</p> <p>3 who was involved in the chain of custody, correct?</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. There was nothing like that in the</p> <p>6 data package that you provided the plaintiffs, was</p> <p>7 there?</p> <p>8 <b>A. No.</b></p> <p>9 Q. If we would look at the second page</p> <p>10 of the chain of custody, page 38147, or page 4 of</p> <p>11 the document, it shows specimen with tamper tape,</p> <p>12 and then there's a photograph, correct?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. And that provides a verification that</p> <p>15 the sample arrived with the seals intact, correct?</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. There was no -- there were no photos</p> <p>18 in the data packs of my client's tests, were there?</p> <p>19 <b>A. We didn't have the specimens any</b></p> <p>20 <b>longer.</b></p> <p>21 Q. You had the -- you had the specimens</p> <p>22 when they arrived, correct?</p> <p>23 <b>A. Yes, but these pictures were not</b></p> <p>24 <b>taken at the time the specimen was arrived. These</b></p> <p>25 <b>were taken at the time litigation package was put</b></p>   |
| <p>Page 226</p> <p>1 Q. There's a table of contents. That's</p> <p>2 on page 38145, correct?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. To make it easy for whoever's</p> <p>5 reviewing to do the review, know what to find and</p> <p>6 where to find it, correct?</p> <p>7 <b>A. There is a table of contents, yes.</b></p> <p>8 Q. And that assists the reader in</p> <p>9 knowing what to find and where to find it, correct?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. There was no table of contents in the</p> <p>12 data packs you provided us, was there?</p> <p>13 <b>A. No.</b></p> <p>14 Q. There was a data -- excuse me. There</p> <p>15 was a table of contents in the data packs you</p> <p>16 provided to Dr. Wagner, wasn't there?</p> <p>17 <b>A. I'd have to look at one. I don't</b></p> <p>18 <b>remember what was provided to him.</b></p> <p>19 Q. Okay. Well, we may have a chance to</p> <p>20 look at it, unless that will be for Dr. Glinn. I'm</p> <p>21 not sure.</p> <p>22 The sample litigation package,</p> <p>23 Exhibit 25, has a section entitled: Chain of</p> <p>24 custody.</p> <p>25 <b>A. Yes.</b></p> | <p>Page 228</p> <p>1 <b>together. We've never taken specimens of -- we've</b></p> <p>2 <b>never taken pictures of specimens as they've been</b></p> <p>3 <b>received.</b></p> <p>4 Q. Why not?</p> <p>5 <b>A. Because we receive over 8,000 samples</b></p> <p>6 <b>a day. It's overly burdensome. No laboratory</b></p> <p>7 <b>takes pictures of samples as they receive them.</b></p> <p>8 Q. How do you know that?</p> <p>9 <b>A. Okay. I will -- let me rephrase</b></p> <p>10 <b>that.</b></p> <p>11 <b>Of the laboratories that I've been at</b></p> <p>12 <b>of similar size and similar type of work that we do</b></p> <p>13 <b>here, including other CAP- and CLIA-certified</b></p> <p>14 <b>laboratories where we do mutual inspections and</b></p> <p>15 <b>where I've personally worked, there was no picture</b></p> <p>16 <b>that was taken at the time of receipt of the</b></p> <p>17 <b>specimens. It is not typical.</b></p> <p>18 Q. Was it at the time in 2015 or 2016?</p> <p>19 <b>A. No. This was taken after the fact</b></p> <p>20 <b>when the litigation package was requested.</b></p> <p>21 Q. What happens to the specimen -- to</p> <p>22 the specimen packages?</p> <p>23 <b>A. I don't understand the question.</b></p> <p>24 Q. How is it that you had the specimen</p> <p>25 packages to take the photographs in the sample</p> |

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1 litigation package?

2 **A. Because the sample litigation was --**

3 **was requested within the first year. Right? So**

4 **typically, our customers, when they ask for**

5 **litigation package, it's going to be within that**

6 **year that we have the specimen. We retain those**

7 **specimens.**

8 In this example, when we put this

9 together, we would go back to the -- where that

10 sample was frozen because, you know, we may -- back

11 in 2015, we were probably doing less than ten

12 litigation packages a year. So when it was

13 requested, we would go back to where this sample

14 was sitting in frozen storage and take a picture of

15 it.

16 Q. How long are the samples kept? You

17 said a year?

18 **A. One year.**

19 Q. One year?

20 **A. Yes.**

21 Q. And we filed our requests on -- in

22 early 2023, so anything that was within a year, you

23 could have taken a photograph, correct? At the

24 time we filed our request for -- for you to produce

25 all the records you had on the tests.

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1 **A. Correct.**

2 Q. And you didn't produce any, did you?

3 **A. No.**

4 Q. And -- and --

5 **A. Because that's not what we provide in**

6 **our litigation packages today. Like I said, this**

7 **was a package back from 2015. In litigation**

8 **packages that we provide to our customers today, we**

9 **don't provide a picture of the specimen.**

10 Q. You know that David Shnitzer

11 complained about his result within days of when he

12 got the results back?

13 **A. Okay.**

14 Q. You know that, don't you?

15 **A. Yes. I do.**

16 Q. And he complained about how it was

17 collected, didn't he?

18 **A. Yes.**

19 Q. You didn't save the photographs, or

20 you didn't take photographs, of his samples that

21 were still pretty fresh, correct?

22 **A. There was not a request from the**

23 **courts for a litigation package. There was not a**

24 **request from Massachusetts for a litigation**

25 **package.**

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1 Q. There was a -- there was a complaint

2 by Mr. Shnitzer. Couldn't you have taken a

3 photograph then and said see here, everything

4 was -- was on the up-and-up?

5 **A. As I'd indicated previously, any --**

6 **our contract is with the state. So in this case,**

7 **the state of Massachusetts. So anything having to**

8 **do with testing the specimens needed to be a**

9 **request that came from Massachusetts.**

10 Q. Have you ever -- strike that.

11 And so you didn't think it would --

12 it would at all help responding to Mr. Shnitzer's

13 request to show him a photograph of the -- of the

14 package?

15 **A. We don't provide information back to**

16 **the client giving the -- or to the patient**

17 **themselves. Any requests for information we**

18 **provide back to Massachusetts.**

19 Q. You didn't --

20 **A. So had Massachusetts asked us for**

21 **pictures of the specimens, we would have provided**

22 **those to them.**

23 Q. And -- and why don't you provide

24 records to a patient who complains? Somebody did

25 respond to Katza Foulger when -- when she made her

Page 232

1 complaint and asked for the sample back.

2 **A. Because our contract is with the**

3 **state or the county entity. So with Maricopa**

4 **County or with Massachusetts.**

5 Q. But why did you respond to

6 Mrs. Foulger and you didn't respond to

7 Mr. Shnitzer? Do you think it's responsible to get

8 a complaint from him and you have the evidence that

9 you say could refute the complaint and you didn't

10 provide it to him?

11 **A. We provided the -- we did an**

12 **investigation and provided a written documentation**

13 **back to Massachusetts.**

14 Q. My question is: Do you think it's

15 responsible not to provide that to Mr. Shnitzer

16 himself and not to provide him a photograph that

17 could refute his complaint?

18 **A. He didn't ask for a photograph, and**

19 **our contract is not with him, it's with**

20 **Massachusetts.**

21 Q. He didn't -- all he did was make his

22 complaint. My question is: Do you think it's

23 responsible not to have photographed his -- his

24 specimens?

25 **A. I think what we did around his**



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**1 testing is responsible.**

2 Q. All right. Have you ever had a

3 delivery service deliver something to your house?

**4 A. Yes.**

5 Q. And take a picture to show that it

6 arrived and where it is?

**7 A. Yes.**

8 Q. They do it, so why don't you do it?

**9 A. Again, it's to the number of**

**10 specimens that are received in our laboratory on a**

**11 daily basis.**

12 Q. How many deliveries do you think Uber

13 makes a day or DoorDash or UPS?

**14 A. They're a much larger organization**

**15 with many more people.**

16 Q. Because they have many more

17 deliveries. They have one person per delivery, and

18 they -- and they find it -- the ability to take a

19 photograph and send it to the customer.

**20 A. It's not common practice in the**

**21 industry to take pictures of a sample that was**

**22 received at the laboratory.**

23 Q. Is the reason why you only respond to

24 the state or the court and not to the individual --

25 except of course there was Mrs. Foulger's instance

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1 -- is that those are the people who are paying you?

**2 A. No, it's who -- it's who our contract**

**3 is with.**

4 Q. Have you had -- do -- do any of your

5 contracts forbid you from communicating with the

6 actual person who's being tested?

**7 A. I don't believe that there's language**

**8 in there to -- to forbid it.**

9 Q. Okay.

**10 A. But our contract, right, you're going**

**11 to have communication with who you have a contract**

**12 with, not with a third-party person.**

13 Q. Except in Mrs. Foulger's case.

14 Right?

**15 A. Right.**

16 Q. And I -- I think there were also

17 direct communications with the Padillas, weren't

18 there?

**19 A. I'm not sure.**

20 Q. Okay. If you look at page 5 of

21 Exhibit 25, do you see that Section 2, Screening

22 Data?

**23 A. Yes.**

24 Q. And that's a section that provides

25 data on instrument calibration and controls with

Page 235

1 weekly calibrations?

**2 A. Yes.**

3 Q. That was not part of the data packs

4 that you provided the plaintiffs with, was it?

**5 A. It was part of the supplemental.**

6 Q. No, my question is: The data packs

7 that you provided to the plaintiffs, that was not

8 part of it, was it?

**9 A. The data packs we provided to which**

**10 plaintiffs?**

11 Q. Any of the plaintiffs. You didn't

12 have data on instrument calibration and controls

13 with weekly calibrations. I mean, take a look at

14 starting with 38150, all of that data that's headed

15 calibrations.

**16 A. So I understand it, we provide -- we**

**17 produced data and then we produced supplemental**

**18 data packs.**

19 Q. You did not produce a supplemental

20 data pack. You might have produced data that we

21 requested, but the data packs that you provided,

22 which are the only data packs we received on any of

23 the plaintiffs, they do not have information as in

24 this section from the sample litigation package

25 entitled Weekly Calibrations, correct?

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**1 A. Correct.**

2 Q. And then there's also a section

3 entitled Donor Data. That's at page 13,

4 Bates 38156.

5 Do you see that?

**6 A. Yes.**

7 Q. Do you see that on --

**8 A. I said yes. I'm sorry if you didn't**

**9 hear me.**

10 Q. I didn't.

**11 A. I apologize. I think I said it**

**12 softly, yes.**

13 Q. Okay. All right. There's no donor

14 data section in the data packs as there is in the

15 sample litigation package, correct?

**16 A. Yes.**

17 Q. That is correct?

**18 A. Yes, that is correct.**

19 Q. And then the next page is Instrument

20 Maintenance.

21 Do you see that?

**22 A. Yes.**

23 Q. That's not in the data packs, is it?

**24 A. No.**

25 Q. And then Section 3 is entitled --

|  |  |
|--|--|
| <p>1 that's on page 15. That's entitled Section 3,<br/> 2 LC-MS/MS Confirmation Data THC.<br/> 3 Correct?<br/> 4 <b>A. We don't use this form anymore. This</b><br/> 5 <b>is outdated.</b><br/> 6 Q. What -- and --<br/> 7 <b>A. The batch prep sheet that you're</b><br/> 8 <b>referring to.</b><br/> 9 Q. I'm referring to Section 3.<br/> 10 <b>A. Okay. LC-MS Confirmation Data THC.</b><br/> 11 <b>That's just a header.</b><br/> 12 Q. Oh. And then the next page, batch<br/> 13 prep sheet?<br/> 14 <b>A. We don't -- this is not in our</b><br/> 15 <b>procedures today. We don't use a batch prep sheet.</b><br/> 16 Q. Do you have any record of the batch<br/> 17 prep?<br/> 18 <b>A. In the database, it's going to be in</b><br/> 19 <b>the chain of custody section.</b><br/> 20 Q. For example, on the batch prep sheet<br/> 21 on page 16 of Exhibit 25, the first task is:<br/> 22 Poured confirmation samples into microfuge tubes.<br/> 23 Do you see that?<br/> 24 <b>A. I do.</b><br/> 25 Q. And that's not in the data packs, is</p> | <p>1 Q. Page 23 is Section C, Confirmation<br/> 2 Results Summary.<br/> 3 <b>A. Okay. That's a header, yes.</b><br/> 4 Q. And then the data is on page 24?<br/> 5 <b>A. Yes.</b><br/> 6 Q. Is there anything like that in the<br/> 7 data packs?<br/> 8 <b>A. Yes.</b><br/> 9 Q. And where -- if you take one of the<br/> 10 data packs --<br/> 11 <b>A. Yes.</b><br/> 12 Q. -- and tell me where that is.<br/> 13 <b>A. Exhibit 22, page 110, where it starts</b><br/> 14 <b>to show the chromatographs.</b><br/> 15 Q. Page 38168 contains a Section D,<br/> 16 Sequence Table, and it contains a sequence table,<br/> 17 correct?<br/> 18 <b>A. Yes.</b><br/> 19 Q. Why do you do this?<br/> 20 <b>A. To be able to show the information</b><br/> 21 <b>about the controls, and then the sequence of the</b><br/> 22 <b>specimens.</b><br/> 23 Q. The sequence of the specimens in the<br/> 24 batch?<br/> 25 <b>A. Yes.</b></p>  |
| <p>1 it? That's not in the chain of custody?<br/> 2 <b>A. We don't use this form anymore.</b><br/> 3 Q. But you don't have any information<br/> 4 about pouring the confirmation samples into the<br/> 5 centrifuge tubes. Do you?<br/> 6 <b>A. No.</b><br/> 7 Q. If you would look at the -- page 17,<br/> 8 Section B, Calibrations and Controls.<br/> 9 Do you see that?<br/> 10 <b>A. Yes.</b><br/> 11 Q. And are those -- are those -- on the<br/> 12 first two pages, they contain a -- a -- a<br/> 13 calibration, that's the -- the two lines, slanted<br/> 14 lines?<br/> 15 <b>A. Yes.</b><br/> 16 Q. All right. And then the rest of<br/> 17 those, there are chromatograms?<br/> 18 <b>A. Yes.</b><br/> 19 Q. And those are -- are those<br/> 20 chromatograms of the calibrators and controls?<br/> 21 <b>A. Yes.</b><br/> 22 Q. And that was not part of the data<br/> 23 packs?<br/> 24 <b>A. We provided it in a tabular format,</b><br/> 25 <b>not in the actual peak format.</b></p>   | <p>1 Q. So not just the patients or the<br/> 2 individual specimen, the sample you're testing, but<br/> 3 the other specimens that are in the batch?<br/> 4 <b>A. Some of them. I don't know that this</b><br/> 5 <b>is all. If you can see, our batches typically were</b><br/> 6 <b>larger than that.</b><br/> 7 Q. Okay.<br/> 8 <b>A. So it shows that the -- it shows the</b><br/> 9 <b>sequence of the specimen --</b><br/> 10 <b>THE WITNESS: Whoops, I'm sorry. Did</b><br/> 11 <b>I pull myself out?</b><br/> 12 <b>THE VIDEOGRAPHER: No, you're still</b><br/> 13 <b>good.</b><br/> 14 <b>THE WITNESS: No? Okay.</b><br/> 15 <b>It shows the -- the -- the list</b><br/> 16 <b>around the other specimens that are tested. So</b><br/> 17 <b>this is not a full sequence of the batch.</b><br/> 18 Q. (BY MR. CORNFELD) It has -- it has<br/> 19 25 specimens, correct?<br/> 20 <b>A. It does.</b><br/> 21 Q. All right. And there was no sequence<br/> 22 table in the data packs that we were provided, was<br/> 23 there?<br/> 24 <b>A. There's a partial sequence table on</b><br/> 25 <b>these as well that you can see.</b></p> |

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1 Q. Does have anywhere near 25 items?  
2 **A. Correct. There is --**  
3 Q. How many --  
4 **A. -- it is a partial sequence table.**  
5 Q. It had about three items, correct?  
6 **A. It showed the samples before and**  
7 **after so you could look to see if there's potential**  
8 **carryover.**  
9 Q. The purpose of the sequence table is  
10 to show potential carryover, correct?  
11 **A. Yes.**  
12 Q. And -- and you need more than  
13 three --  
14 **A. You don't --**  
15 Q. -- items --  
16 **A. -- need more than three because**  
17 **typically if you're going to show that the sample**  
18 **before it was huge, you just need to see the**  
19 **sample -- one or two sample -- preceding samples**  
20 **and not more than that.**  
21 Q. What -- what is carryover?  
22 **A. Carryover is where the -- the**  
23 **specimen before it, the concentration is so high**  
24 **that is there the risk that some -- that that**  
25 **potential sample didn't completely clear out before**

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1 **the next sample's injected.**  
2 Q. So that the positive result wasn't  
3 from that sample but from a prior sample?  
4 **A. Correct.**  
5 MR. CORNFELD: All right. Why don't  
6 we take a break.  
7 THE VIDEOGRAPHER: Time is 4:02 p.m.  
8 We are off the record.  
9 (A short break was taken.)  
10 THE VIDEOGRAPHER: The time is  
11 4:30 p.m. We are back on the record.  
12 Q. (BY MR. CORNFELD) I'd like to ask  
13 about Dr. Riley.  
14 **A. Okay.**  
15 Q. You -- she was hired on August 28,  
16 2020, correct?  
17 **A. Yes.**  
18 Q. Handing you Exhibit 26. Is this the  
19 letter you sent to her on August 28, 2020 -- or not  
20 sent to Dr. Riley, but sent to the Department of  
21 Pathology at Saint Louis U telling them that  
22 Dr. Riley would be joining Averhealth in your  
23 St. Louis laboratory in the role of laboratory  
24 director?  
25 **A. Yes.**

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1 Q. And Dr. Riley would not be considered  
2 an employee of Averhealth?  
3 **A. Correct.**  
4 Q. Why is that?  
5 **A. My understanding is based on her**  
6 **employment with Saint Louis University, this was**  
7 **her choice, that she wanted us to pay Saint Louis**  
8 **University, that she could turn around and use that**  
9 **money to hire somebody to work alongside of her**  
10 **there.**  
11 Q. Alongside of her?  
12 **A. At SLU.**  
13 Q. Okay.  
14 **A. She wanted to use it as a stipend.**  
15 Q. I'm sorry?  
16 **A. She wanted to use it as a stipend for**  
17 **employment for a fellow at Saint Louis University**  
18 **and didn't want to be employed directly.**  
19 Q. And she would still be employed at  
20 Saint Louis University?  
21 **A. Yes.**  
22 Q. In her role as professor?  
23 **A. Yes.**  
24 Q. Why did you feel the need to hire a  
25 new laboratory director in 2020?

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1 **A. Because Dr. Glinn had moved to**  
2 **Michigan and we wanted a laboratory director that**  
3 **could be on site more frequently.**  
4 Q. Dr. Glinn was still going to be  
5 employed at Averhealth?  
6 **A. Yes.**  
7 Q. What was her title going to be?  
8 **A. She continued to assume the role of**  
9 **-- she was moving into a scientist. I don't**  
10 **remember what her actual title was. She was moving**  
11 **into a role as a toxicologist.**  
12 Q. Did -- was part of the reason why you  
13 wanted a new laboratory director that you wanted  
14 somebody to improve your procedures?  
15 **A. No.**  
16 Q. Had nothing to do with it?  
17 **A. Correct.**  
18 Q. Did the fact that you had failed a  
19 lot of proficiency tests in the previous year have  
20 anything to do with it?  
21 MR. CEJAS: Object to the form.  
22 Assumes facts not in evidence.  
23 Go ahead.  
24 **THE WITNESS: Can you show me the**  
25 **fact we'd failed a lot? We actually didn't fail a**

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1 lot of proficiency tests.  
2 Q. (BY MR. CORNFELD) But you had a lot  
3 of unacceptable results?  
4 MR. CEJAS: Same objection. Assumes  
5 facts not in evidence.  
6 THE WITNESS: Our overall percentages  
7 were not failed. We still were good on our  
8 proficiency tests, the overall score.  
9 Thank you.  
10 Q. (BY MR. CORNFELD) I've handed you  
11 what's been -- I handed you what's been marked as  
12 Exhibit 27, which is a document Bates number on the  
13 first page of 21685 titled CAP PT Exception  
14 Investigation Checklist.  
15 Do you see that?  
16 A. I do.  
17 Q. PT stands for proficiency test?  
18 A. Yes.  
19 Q. What is a proficiency test?  
20 A. CAP sends us the spiked samples  
21 that -- of certain drugs of unknown concentration,  
22 and through that process, we test those alongside  
23 of other specimens and we report out the test  
24 results.  
25 Q. And -- and for any unacceptable

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1 results, you have to submit a PT Exception  
2 Investigation Checklist, correct?  
3 A. Correct.  
4 Q. And this one is from tests that were  
5 done in September 2019? This one meaning  
6 Exhibit 27?  
7 A. Correct.  
8 Q. And there were five unacceptable  
9 results, correct?  
10 A. We found the accurate result, so in  
11 this case, if you look at these, we found all the  
12 drugs that were spiked in there. So we found the  
13 PCP, the one that's labeled unacceptable result 1;  
14 in UDC result 2, we found the EDDP, which is the  
15 metabolite of methadone. In result 3, UDC 28, we  
16 found the 6-MAM. In unacceptable result 4, we  
17 found THC. And in UDC 23, unacceptable result 5,  
18 we found the pH result.  
19 The -- the question was the results  
20 range and whether it was reported within the range  
21 of us compared to other laboratories.  
22 Q. Are you disputing the fact that these  
23 were considered -- these five results were  
24 considered unacceptable?  
25 A. I'm not.

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1 Q. Okay.  
2 A. I'm -- I'm explaining the fact that  
3 we found the drug that was present.  
4 Q. And -- and still had an --  
5 A. What they wanted us to look into is  
6 why our results were not in the range that was  
7 reported.  
8 Q. And -- and CAP considered them  
9 unacceptable, correct?  
10 A. For the range, yes.  
11 Q. And part of the exception  
12 investigation checklist is to analyze why these  
13 were unacceptable, correct?  
14 A. Yes.  
15 Q. And for that, in the conclusion  
16 summary, all that's stated is all were acceptable  
17 upon repeat, correct?  
18 A. Correct, yes.  
19 Q. You didn't actually figure out why  
20 they were unacceptable?  
21 A. It shows that it was acceptable upon  
22 repeat, yes.  
23 Q. Now, my clients who had positive  
24 results that they say are not accurate, you didn't  
25 repeat those. They didn't have the benefit of

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1 having somebody say these were unacceptable so that  
2 you could repeat them and find that they were  
3 normal, did they?  
4 A. The results were accurate. They --  
5 they -- we found the positive drug that was spiked  
6 in there. What CAP wants us to look at is why the  
7 quantitative value is not within the range that  
8 they had specified.  
9 Q. My -- my question was: My clients  
10 didn't have the benefit of having somebody say that  
11 the results were unacceptable and have you repeat  
12 the tests, correct?  
13 A. They could have asked to have the  
14 test repeated.  
15 Q. They -- well, some of them complained  
16 about it to you that you didn't repeat the tests.  
17 A. The customer -- they could have gone  
18 to their -- whoever was contracted for them and  
19 asked us to repeat the samples. And in Michigan,  
20 we had requests for repeats on a regular basis that  
21 we conducted.  
22 Q. Well, Mrs. Foulger, she wanted to  
23 have her test repeated, and you said, sorry, we get  
24 -- we destroyed all of your hair that we had,  
25 correct?

|   |  |
|---|--|
| <p>Page 249</p> <p>1 <b>A. Correct.</b></p> <p>2 Q. When -- when somebody from Michigan</p> <p>3 requested you repeat a test --</p> <p>4 <b>A. Uh-huh.</b></p> <p>5 Q. -- were there times when they came</p> <p>6 back after having been tested the first time</p> <p>7 positive, they came back negative?</p> <p>8 <b>A. There were very few instances, less</b></p> <p>9 <b>than 1 percent where the drug was still present but</b></p> <p>10 <b>was below the cutoff due to sample degradation</b></p> <p>11 <b>between the timing between when the original test</b></p> <p>12 <b>was done and when the secondary test was done.</b></p> <p>13 <b>Besides the one isolated event, that</b></p> <p>14 <b>I'm sure we'll -- that we will talk about, which</b></p> <p>15 <b>was a tray that the samples were put in the</b></p> <p>16 <b>incorrect place, so there were 13 results that one</b></p> <p>17 <b>client asked us to take a look into. And through</b></p> <p>18 <b>the investigation, we realized that not only that</b></p> <p>19 <b>one sample had been incorrectly reported because it</b></p> <p>20 <b>was all on a tray, that we proactively then</b></p> <p>21 <b>corrected all the results and notified all the</b></p> <p>22 <b>caseworkers of that instance of those 13 specimens.</b></p> <p>23 Q. That wasn't an administrative error,</p> <p>24 was it?</p> <p>25 <b>A. It was a -- no, I didn't say that it</b></p> | <p>Page 251</p> <p>1 foundation.</p> <p>2 But subject to that, go ahead.</p> <p>3 <b>THE WITNESS: I would want to see all</b></p> <p>4 <b>of our reports to be able to verify that. So if we</b></p> <p>5 <b>want to pull out all of our -- our scoring, then we</b></p> <p>6 <b>can go through and I can ensure that all that's</b></p> <p>7 <b>factually correct.</b></p> <p>8 Q. (BY MR. CORNFELD) Okay. I'd like</p> <p>9 you to assume it. There will be experts on both</p> <p>10 sides who will be looking at this.</p> <p>11 <b>A. Okay.</b></p> <p>12 Q. But I'd like you to assume that was</p> <p>13 the case. And you're saying that had nothing to do</p> <p>14 with hiring Dr. Riley?</p> <p>15 <b>A. Correct.</b></p> <p>16 Q. Do you know that CAP discussed with</p> <p>17 you the unacceptable PT results when you were on</p> <p>18 probation?</p> <p>19 <b>A. They discussed with me unacceptable</b></p> <p>20 <b>results? Can you --</b></p> <p>21 Q. Discussed with Averhealth.</p> <p>22 <b>A. Can you talk to me about what --</b></p> <p>23 Q. We will have an opportunity --</p> <p>24 <b>A. Okay. Okay.</b></p> <p>25 Q. Are you -- unless that gets -- also</p> |
| <p>Page 250</p> <p>1 <b>was an administrative error.</b></p> <p>2 Q. I know you didn't, that's why I'm</p> <p>3 asking.</p> <p>4 <b>A. Okay.</b></p> <p>5 Q. It wasn't an administrative error,</p> <p>6 was it?</p> <p>7 <b>A. It was a human error that somebody</b></p> <p>8 <b>loaded the tray incorrectly.</b></p> <p>9 Q. So I went through the PT tests for</p> <p>10 the year before Dr. Riley started.</p> <p>11 <b>A. Yes.</b></p> <p>12 Q. And looking at the PT Exception</p> <p>13 Investigation Checklist, and I found in the test of</p> <p>14 September 22, 2020, there was one unacceptable</p> <p>15 result; in October, there was one unacceptable</p> <p>16 result; there also was in December.</p> <p>17 And there was a second test in -- on</p> <p>18 December 30th of 2019 where the creatinine tests</p> <p>19 for all specimens were unacceptable. There was one</p> <p>20 unacceptable in January; five again in February;</p> <p>21 three in March; two in April; one in May; four in</p> <p>22 July; and one in 9. And that was all of them.</p> <p>23 Does that sound familiar?</p> <p>24 MR. CEJAS: Let me just object.</p> <p>25 Objection. Assumes facts not in evidence and</p>   | <p>Page 252</p> <p>1 gets deferred to D. Riley.</p> <p>2 <b>A. You mean Dr. Glinn.</b></p> <p>3 Q. I'm sorry, to Dr. Glinn. But do you</p> <p>4 recall that, that that happened?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. Okay.</p> <p>7 <b>A. I just want to be clear.</b></p> <p>8 <b>Unacceptable means around the quantitation of it,</b></p> <p>9 <b>not that we actually found the correct result or</b></p> <p>10 <b>not. So there's no argument on these that we</b></p> <p>11 <b>didn't find the drug present. It's about the</b></p> <p>12 <b>numerical number.</b></p> <p>13 MR. CORNFELD: Move to strike as</p> <p>14 nonresponsive to any question.</p> <p>15 Q. (BY MR. CORNFELD) Was</p> <p>16 Dr. Riley going to be -- excuse me -- was -- yes,</p> <p>17 was Dr. Riley going to be full-time?</p> <p>18 <b>A. No.</b></p> <p>19 Q. She was not full-time, was she?</p> <p>20 <b>A. She was not.</b></p> <p>21 Q. What were her hours?</p> <p>22 <b>A. She was supposed to work 20 hours per</b></p> <p>23 <b>week. So she would split her time.</b></p> <p>24 Q. By the way, when those PT results</p> <p>25 were unacceptable --</p>  |



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1 **A. Uh-huh.**

2 Q. -- that wasn't an administrative

3 error, was it?

4 **A. No. But it wasn't an error at all.**

5 **The results were accurately reported. The question**

6 **was about the quantitation. So it's not an error.**

7 **They were not reported in error. The drug was**

8 **found.**

9 Q. Aren't the levels of my client's

10 test, what we're talking about, whether they were

11 above or below the cutoff?

12 **A. To determine a specimen to be**

13 **positive or negative, yes, there is a established**

14 **cutoff.**

15 Q. And -- and there are levels that are

16 either above or below the cutoff?

17 **A. Correct.**

18 Q. And for -- how was Dr. Riley trained

19 at Averhealth?

20 **A. A combination of spending time with**

21 **Dr. Glinn, as well as spending time with other**

22 **laboratory staff on site to learn our processes and**

23 **procedures. So it would have been some, you know,**

24 **training -- I believe Dr. Glinn and Dr. Riley spent**

25 **about a week together, and then obviously when she**

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1 **was on site, it would have been with the team that**

2 **was there. So Christina Essington, Shannon**

3 **Spencer, and others throughout her time frame.**

4 **She was not on site at the 20 hours**

5 **as agreed upon, but actually spent considerably**

6 **less time on site to fully understand our processes**

7 **and procedures. She committed to be on site for**

8 **20 hours a week and actually was on site less than**

9 **10 hours a week.**

10 Q. Did she -- did she clock in and clock

11 out?

12 **A. She did not.**

13 Q. Was any record kept of what hours she

14 was on site?

15 **A. There was not.**

16 Q. Then how do you know that she was not

17 on site for more than 10 hours?

18 **A. She had an office across the hall**

19 **from Shannon Spencer, who was a full-time employee**

20 **that was there for, you know, 10 to 12 hours a day.**

21 **And typically, when Dr. Riley was there, she would**

22 **have checked in with Shannon and checked out.**

23 **So based on feedback that I received**

24 **from employees that were on site, they saw**

25 **Dr. Riley less than 10 hours a week.**

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1 Q. Was she ever chastised or reprimanded

2 or was that ever brought to her attention while she

3 was working for Averhealth?

4 **A. It was not.**

5 Q. Dr. Riley began with Averhealth on

6 September 14, 2020, correct?

7 **A. I'd have to check a document to know**

8 **exactly what date she started.**

9 Q. We'll see a document to that effect.

10 Just assume for now that it was --

11 **A. Okay.**

12 Q. -- it was September 14, 2020.

13 (A discussion was held off the

14 record.)

15 MR. CEJAS: Thank you.

16 Q. (BY MR. CORNFELD) Handing you what's

17 been marked as Exhibit 28 --

18 **A. Okay.**

19 Q. -- which is a one-page document with

20 the Bates number 15724.

21 Do you see that this is a memorandum

22 on Averhealth letterhead dated and timed from

23 September 13, 2020, from 12 noon to 1:00 p.m. about

24 a meeting with you and Dr. Glinn and Dr. Riley?

25 **A. Yes.**

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1 Q. Did Dr. Riley report to you?

2 **A. Yes.**

3 Q. And so this was actually -- would

4 have been the day before she started, correct?

5 **A. I need to look at a calendar if -- I**

6 **don't -- if we had a meeting from 12:00 to 1:00,**

7 **what day of the week is this? I would have assumed**

8 **she would have started.**

9 **THE WITNESS: Can I look at my phone**

10 **to look at a calendar?**

11 MR. CEJAS: Sure.

12 **THE WITNESS: So I know what day of**

13 **the week it is?**

14 Q. (BY MR. CORNFELD) I can ask Siri.

15 MR. CEJAS: I'll have an answer for

16 you in just a second.

17 MR. PLEBAN: Which is it, 9/13?

18 **THE WITNESS: 9/13/2020.**

19 MR. PLEBAN: 2020 is a Sunday.

20 9/13/2020.

21 MR. CEJAS: Agreed.

22 **THE WITNESS: Okay.**

23 Q. (BY MR. CORNFELD) And this -- this

24 was a division of responsibilities that was

25 established during this meeting between Dr. Riley

Page 257

1 and Dr. Glinn?

2 **A. And myself, the three of us I believe**

3 **were in the meeting together.**

4 Q. Right. What I meant was it was a

5 division of responsibilities between the two of

6 them?

7 **A. Correct.**

8 Q. And -- and what their

9 responsibilities are for each of them is set forth

10 under their names, correct?

11 **A. Correct.**

12 Q. And everybody agreed on that division

13 of responsibility?

14 **A. Yes.**

15 Q. And you know that Dr. Riley grew

16 dissatisfied with what was going on in the

17 laboratory, correct?

18 **A. Can you be more specific in your**

19 **question?**

20 Q. Well, she raised concerns with you

21 about the laboratory's practices and procedures,

22 correct?

23 **A. She sent me an e-mail wanting to make**

24 **some changes in processes, yes.**

25 Q. Well, there was more than that. She

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1 had concerns about the practices, not just that she

2 wanted to make changes, correct?

3 **A. Yes.**

4 Q. She called them significant concerns,

5 correct?

6 **A. Those were the words she used, yes.**

7 Q. Do you know that Averhealth told CAP

8 that Dr. Riley never once raised any concerns while

9 working for Averhealth?

10 **A. I'm -- I'd need to see the verbiage**

11 **that was put in there.**

12 Q. Well, we will get --

13 **A. We'll get there?**

14 Q. We will get there. Well, here.

15 MR. CEJAS: That's your highlighted

16 copy.

17 MR. CORNFELD: Whoops.

18 **THE WITNESS: Looks like two are**

19 **highlighted.**

20 MR. CORNFELD: Yeah, there are. You

21 can have the other one.

22 **THE WITNESS: Thank you.**

23 Q. (BY MR. CORNFELD) I've handed you

24 what's been marked as Exhibit 29, a multipage

25 document bearing the number on the first page of

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1 21671. This is on the letterhead of Averhealth,

2 and it's a letter dated January 4, 2021, to Lena

3 Portillo of the investigations department of CAP's

4 accreditation department. And it is signed by

5 Dr. Glinn, if you look on page 21676.

6 Do you have that?

7 **A. I do.**

8 Q. CAP stands for the College of

9 American Pathologists, correct?

10 **A. Yes.**

11 Q. And it's the body that provides

12 Averhealth with its accreditation as a forensic

13 laboratory, correct?

14 **A. Yes.**

15 Q. And we'll get to this letter in more

16 detail, but if you would look at the third

17 paragraph, the paragraph that starts: We have

18 tremendous. Four lines down, she says: It is

19 perplexing that Sarah Riley never once raised any

20 concerns while working for Averhealth.

21 Do you see that?

22 **A. Yes.**

23 Q. That was not a true statement, was

24 it?

25 **A. She sent one e-mail with quality**

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1 **changes that she wanted to make that she sent to**

2 **me.**

3 Q. It was not a true statement that she

4 never once raised any concerns while she was

5 working for Averhealth, was it?

6 **A. Correct.**

7 Q. Why did Dr. Riley lie about that?

8 Excuse me, why did -- strike that.

9 Why did Dr. Glinn lie about that?

10 **A. I don't know.**

11 MR. CEJAS: Objection. For the

12 record, my objection was assumes facts not in

13 evidence.

14 Q. (BY MR. CORNFELD) It's not -- it's

15 not -- it's not -- I assume it's not Averhealth's

16 policy that its employees should tell untruths to

17 anyone, much less its accrediting body, correct?

18 **A. Correct.**

19 Q. When did you first learn that she

20 said that to CAP?

21 **A. When did I first learn?**

22 Q. Yes.

23 **A. That this was written in this letter?**

24 Q. Yes.

25 **A. In my recollection, I most likely**

|  |   |
|--|---|
| <p style="text-align: right;">Page 261</p> <p><b>1 reviewed it before it went over to CAP.</b></p> <p>2 Q. Did you -- did you review it with the</p> <p>3 statement that Dr. Riley never once raised any</p> <p>4 concerns while working for Averhealth?</p> <p><b>5 A. I did.</b></p> <p>6 Q. And you let that go out, too?</p> <p><b>7 A. I did.</b></p> <p>8 Q. Even though you know it's not true?</p> <p><b>9 A. She had sent me one e-mail wanting to</b></p> <p><b>10 make concern -- wanting to make changes to our</b></p> <p><b>11 processes, and I responded with her that she, yes,</b></p> <p><b>12 absolutely, what you've outlined as far as the</b></p> <p><b>13 changes that you want to make, go ahead and go</b></p> <p><b>14 forward with those.</b></p> <p>15 Q. No, I'm not talking about wanting to</p> <p>16 make changes. I'm talking about her -- her raising</p> <p>17 concerns, what she called significant concerns,</p> <p>18 with -- with you, with Averhealth. Why did you let</p> <p>19 this letter go out with this statement that it's</p> <p>20 perplexing that Sarah Riley never once raised any</p> <p>21 concerns while working for Averhealth?</p> <p><b>22 A. I was confident in the testing</b></p> <p><b>23 processes that were outlined in our SOPs, and in</b></p> <p><b>24 the test results that we put out.</b></p> <p>25 Q. That's a different issue. I know</p> | <p style="text-align: right;">Page 263</p> <p><b>1 A. I believe so.</b></p> <p>2 Q. All right. And Mr. Herzog was the</p> <p>3 CEO of Averhealth at the time, correct?</p> <p><b>4 A. That is correct, yes.</b></p> <p>5 Q. He was your boss, correct?</p> <p><b>6 A. Yes, he was.</b></p> <p>7 Q. So you were Dr. Riley's boss,</p> <p>8 Mr. Herzog was your boss?</p> <p><b>9 A. Correct.</b></p> <p>10 Q. Correct? Okay. And this was -- this</p> <p>11 exchange was initiated by Mr. Herzog on Friday,</p> <p>12 October 30th.</p> <p>13 And by the way, the letter to CAP</p> <p>14 said it was one business day. She actually -- not</p> <p>15 that it matters that much, but it was actually two</p> <p>16 business days, correct, since she resigned on</p> <p>17 Tuesday?</p> <p><b>18 A. Correct.</b></p> <p>19 Q. All right. Is that a -- was that</p> <p>20 just an administrative error to say it was one day</p> <p>21 rather than two?</p> <p><b>22 A. I never saw this exchange beforehand,</b></p> <p><b>23 so...</b></p> <p>24 Q. You don't know how that error was</p> <p>25 made?</p>   |
| <p style="text-align: right;">Page 262</p> <p>1 that you told CAP that you thought that the testing</p> <p>2 processes were proper, and CAP made its own</p> <p>3 judgment on that.</p> <p>4 My question is: Why did you let the</p> <p>5 letter go out with the false statement that</p> <p>6 Dr. Riley never once raised any concerns while</p> <p>7 working for Averhealth?</p> <p><b>8 A. I don't recall.</b></p> <p>9 Q. And then the letter goes on to say:</p> <p>10 Just one work day prior to abruptly resigning,</p> <p>11 Sarah Riley shared how much she looked forward to</p> <p>12 working with the team.</p> <p>13 Do you see that?</p> <p><b>14 A. I do.</b></p> <p>15 Q. Okay. Let's look at what I've handed</p> <p>16 you, what's been marked as Exhibit 30, which is a</p> <p>17 document with the Bates number on the first page of</p> <p>18 36600.</p> <p>19 Do you see that this is an exchange</p> <p>20 of e-mails between Dr. Riley and Jason Herzog on</p> <p>21 October 30th, 2020?</p> <p><b>22 A. I do.</b></p> <p>23 Q. Is this the e-mail that Dr. Glinn was</p> <p>24 referring to when she said she shared how much she</p> <p>25 looked forward to working with the team?</p>  | <p style="text-align: right;">Page 264</p> <p><b>1 A. I do not.</b></p> <p>2 Q. All right. Mr. Herzog says to</p> <p>3 Dr. Riley: Sarah, it was a pleasure meeting you</p> <p>4 yesterday. Very much looking forward to learning</p> <p>5 from you and learning with you. Thanks for joining</p> <p>6 the Averhealth team.</p> <p>7 Do you see that?</p> <p><b>8 A. I do.</b></p> <p>9 Q. That was a very nice e-mail from him</p> <p>10 to Dr. Riley, wasn't it?</p> <p><b>11 A. We'd had a two-day, onsite meeting in</b></p> <p><b>12 Richmond, and had an opportunity for all of us to</b></p> <p><b>13 get together. And she spent two days side-by-side</b></p> <p><b>14 with my boss Mr. Herzog, our CFO, and others with</b></p> <p><b>15 the leadership team.</b></p> <p>16 Q. Okay. My question --</p> <p><b>17 A. And not once there did she raise</b></p> <p><b>18 concerns about our testing.</b></p> <p>19 Q. My question was: This is a very nice</p> <p>20 e-mail --</p> <p><b>21 A. It is.</b></p> <p>22 Q. -- from Mr. Herzog to Dr. Riley?</p> <p><b>23 A. It is.</b></p> <p>24 Q. She probably felt very good when she</p> <p>25 got that, don't you think?</p> |

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| <p>Page 265</p> <p>1 MR. CEJAS: I'm going to object to</p> <p>2 the extent that calls for speculation.</p> <p>3 But go ahead, if you know.</p> <p>4 <b>THE WITNESS: I don't know how she</b></p> <p>5 <b>felt.</b></p> <p>6 Q. (BY MR. CORNFELD) And then he -- and</p> <p>7 then he makes kind of a funny line because</p> <p>8 Halloween's coming up. He says: Hope that you</p> <p>9 have a spooky safe Halloween with your littles.</p> <p>10 I assume he means her children?</p> <p>11 <b>A. I assume so.</b></p> <p>12 Q. Okay. And then he says: Many</p> <p>13 thanks, Jason.</p> <p>14 Do you see that?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. And during that meeting that you had</p> <p>17 for two days, did anybody complain about</p> <p>18 Dr. Riley's performance?</p> <p>19 <b>A. They did not.</b></p> <p>20 Q. Mention that, hey, you're not</p> <p>21 spending enough time at the lab, or you need to</p> <p>22 pick up the time you spent at the lab?</p> <p>23 <b>A. They did not, but nobody would have</b></p> <p>24 <b>known how much -- of that team, nobody would have</b></p> <p>25 <b>known how much time she was spending at the</b></p>     | <p>Page 267</p> <p>1 referring to in the letter to CAP?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. Can you see why in response to</p> <p>4 Mr. Herzog's very nice welcoming note that she</p> <p>5 wouldn't want to go over her boss's head and unload</p> <p>6 all of her complaints to him?</p> <p>7 <b>A. I can't speculate what she was</b></p> <p>8 <b>thinking. I don't know why she wouldn't. If she</b></p> <p>9 <b>had serious analytical concerns, you would think</b></p> <p>10 <b>she would voice them to the CEO of the</b></p> <p>11 <b>organization.</b></p> <p>12 Q. You think she might have thought it</p> <p>13 wasn't her place to go over your head, that she</p> <p>14 should voice them to you first?</p> <p>15 <b>A. I can't speculate exactly what she</b></p> <p>16 <b>was thinking. But again, I'll go back to if she</b></p> <p>17 <b>thought that they were serious concerns, you would</b></p> <p>18 <b>think that she would have raised them not only to</b></p> <p>19 <b>myself, but to the CEO of the company.</b></p> <p>20 Q. Well, you said the CFO and other</p> <p>21 people were there. That wouldn't be their role.</p> <p>22 She was there to learn, and she came -- and then</p> <p>23 she came back and it was the next day that she</p> <p>24 shared her significant concerns with you, correct?</p> <p>25 <b>A. It was. It was the two days. I</b></p> |
| <p>Page 266</p> <p>1 <b>laboratory, being that the leadership team does not</b></p> <p>2 <b>preside in St. Louis or at the laboratory.</b></p> <p>3 Q. Weren't you at the meeting?</p> <p>4 <b>A. I was.</b></p> <p>5 Q. Didn't you know?</p> <p>6 <b>A. I did not know.</b></p> <p>7 Q. Okay. Dr. Riley responds by saying:</p> <p>8 Thank you for including me. I am enjoying CYL.</p> <p>9 What does CYL stand for?</p> <p>10 <b>A. It was a leadership training that we</b></p> <p>11 <b>did. It -- Catch Your Limit is what it stands for.</b></p> <p>12 Q. That was an Averhealth term?</p> <p>13 <b>A. No, it's an actual company.</b></p> <p>14 Q. Oh.</p> <p>15 <b>A. So we hired a third-party company</b></p> <p>16 <b>called Catch Your Limit that did leadership</b></p> <p>17 <b>training for us.</b></p> <p>18 Q. Okay. So she -- she said she's</p> <p>19 enjoying CYL and learning a lot. I've also really</p> <p>20 enjoyed getting to know the team. I'm looking</p> <p>21 forward to working with everyone. Have a good</p> <p>22 weekend. Sarah.</p> <p>23 Do you see that?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. And is that what Dr. Glinn was</p> | <p>Page 268</p> <p>1 <b>believe it was -- if -- if this --</b></p> <p>2 Q. It was on a Sunday.</p> <p>3 <b>A. It was on a Sunday, and I don't</b></p> <p>4 <b>believe it was the 30th. I think it was several</b></p> <p>5 <b>days later. I don't know what day the 30th was.</b></p> <p>6 Q. I've handed you what's been marked as</p> <p>7 Exhibit 31, which is a document that has the</p> <p>8 number 85224 on its first page and is an e-mail --</p> <p>9 <b>A. You gave me your highlighted one</b></p> <p>10 <b>again.</b></p> <p>11 Q. Oh.</p> <p>12 MR. PLEBAN: Start putting your</p> <p>13 initials on these.</p> <p>14 MR. CORNFELD: Yeah, right.</p> <p>15 Q. (BY MR. CORNFELD) Handing you what's</p> <p>16 been marked as Exhibit 31, which is a -- which</p> <p>17 bears the number 85224 on the first page and is an</p> <p>18 e-mail exchange between you and Dr. Riley, along</p> <p>19 with an e-mail from you at the top.</p> <p>20 Is this the e-mail in which Dr. Riley</p> <p>21 made her complaints?</p> <p>22 <b>A. This is where she expressed some</b></p> <p>23 <b>concerns, yes.</b></p> <p>24 Q. Okay. And the e-mail that started</p> <p>25 this exchange was dated Sunday, November 1st --</p>  |

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| <p>Page 269</p> <p>1 <b>A. Correct.</b></p> <p>2 Q. -- 2020 at 12:42 p.m., correct?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. And her subject is: Analytical</p> <p>5 concerns and immediate future plans.</p> <p>6 Correct?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. And when you read this, did you</p> <p>9 conclude that she had been thinking about these</p> <p>10 things for a long time?</p> <p>11 <b>A. I didn't think about that -- I didn't</b></p> <p>12 <b>give it any thought. I read the e-mail for</b></p> <p>13 <b>context.</b></p> <p>14 Q. Okay. You can count up the</p> <p>15 paragraphs, but this is a very long e-mail</p> <p>16 containing 15 paragraphs, correct?</p> <p>17 <b>A. It is. It's an action plan. I mean,</b></p> <p>18 <b>part of it is an action plan. There's five</b></p> <p>19 <b>paragraphs of an action plan.</b></p> <p>20 Q. Well, whatever, the e-mail is</p> <p>21 15 paragraphs long. It showed that she had devoted</p> <p>22 quite a lot of thought to this, correct?</p> <p>23 MR. CEJAS: Let me object. It calls</p> <p>24 for speculation of what she did or didn't do.</p> <p>25 Go ahead.</p>   | <p>Page 271</p> <p>1 were in Richmond, correct?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. Okay. And then you see she goes on</p> <p>4 and says: All of the issues have to do with the MS</p> <p>5 confirmation side of the lab.</p> <p>6 Do you see that, at the end of her</p> <p>7 first full paragraph?</p> <p>8 <b>A. Yes, I do.</b></p> <p>9 Q. What is meant by the MS confirmation</p> <p>10 side of the lab?</p> <p>11 <b>A. The mass spectrometry.</b></p> <p>12 Q. That's -- that's the second part of</p> <p>13 the test, for example, that you do in Michigan, the</p> <p>14 first part being amino assay, and the second would</p> <p>15 be the confirmation part, and the MS confirmation</p> <p>16 refers to that?</p> <p>17 <b>A. It refers to the confirmation side of</b></p> <p>18 <b>the laboratory, the -- the LC-MS/MS testing side of</b></p> <p>19 <b>the lab, yes.</b></p> <p>20 Q. Okay. She says: The most</p> <p>21 significant issue is how frequently QCs fail and</p> <p>22 how data is manipulated to get the QCs in, where</p> <p>23 exceptions are made in order to release results.</p> <p>24 Do you see that?</p> <p>25 <b>A. I see that.</b></p> |
| <p>Page 270</p> <p>1 <b>THE WITNESS: She cited some specific</b></p> <p>2 <b>things on here and provided an action plan.</b></p> <p>3 Q. (BY MR. CORNFELD) My question is</p> <p>4 it's clear from this that she devoted quite a lot</p> <p>5 of thought to it, didn't she?</p> <p>6 MR. CEJAS: Same objection.</p> <p>7 <b>THE WITNESS: Yeah, I can't speculate</b></p> <p>8 <b>how much thought she put into this. It was -- she</b></p> <p>9 <b>provided some feedback and gave an action plan of</b></p> <p>10 <b>what she wanted to do over the coming weeks.</b></p> <p>11 Q. (BY MR. CORNFELD) And she starts out</p> <p>12 by saying: Hi, Dominique. Having observed the</p> <p>13 analytical processes for a few weeks, I have some</p> <p>14 significant concerns.</p> <p>15 That's what she said, correct?</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. So that's what she starts out is</p> <p>18 talking about her concerns, what she said were</p> <p>19 significant, correct?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. And she says: I want to lay them out</p> <p>22 here in an e-mail because I don't want to forget</p> <p>23 anything during a phone call.</p> <p>24 And it would have had to have been a</p> <p>25 phone call because she was in St. Louis and you</p> | <p>Page 272</p> <p>1 Q. And she said that's not even the only</p> <p>2 significant issue, but that's the most significant</p> <p>3 issue, correct?</p> <p>4 <b>A. That's what she said, yes.</b></p> <p>5 Q. And when you saw this, did you</p> <p>6 conclude that that was very significant?</p> <p>7 <b>A. No, because many of the things that</b></p> <p>8 <b>she outlines are practices that we still use today,</b></p> <p>9 <b>and they're scientifically valid and appropriate</b></p> <p>10 <b>practices.</b></p> <p>11 Q. Well, she -- she provides two</p> <p>12 examples.</p> <p>13 <b>A. She does.</b></p> <p>14 Q. And the first one, she says -- and by</p> <p>15 the way, these are practices that she complained</p> <p>16 about to CAP and CAP investigated, correct?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. And -- and we'll look at what CAP</p> <p>19 concluded, but her first example, she says -- it's</p> <p>20 a general example because this happens fairly</p> <p>21 frequently.</p> <p>22 Do you see that?</p> <p>23 <b>A. I do.</b></p> <p>24 Q. And she gives three examples of this</p> <p>25 example. They are changing the IS -- and that</p>    |



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| <p>Page 273</p> <p>1 stands for internal standard, correct?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. Changing the regression of the</p> <p>4 calibration curve, and using historical QCs,</p> <p>5 correct?</p> <p>6 <b>A. That's what these words say, yes.</b></p> <p>7 Q. That's what she told you, what her</p> <p>8 most significant concerns out of the first</p> <p>9 example --</p> <p>10 <b>A. That was her -- yes, that is what she</b></p> <p>11 <b>said, yes.</b></p> <p>12 Q. Okay. And then she says that Jen --</p> <p>13 who is Jen?</p> <p>14 <b>A. Jen Andre, one of the certifying</b></p> <p>15 <b>scientists.</b></p> <p>16 Q. Okay. And she says: Jen tells</p> <p>17 Christina.</p> <p>18 Who is Christina?</p> <p>19 <b>A. Christina Essington.</b></p> <p>20 Q. Okay. So she says: In one Teams</p> <p>21 message -- that's referring to your communication</p> <p>22 system through Microsoft?</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. In one Teams message, Jen tells</p> <p>25 Christina to, quote, work her magic, unquote, to</p>  | <p>Page 275</p> <p>1 meaning the patient sample, was done accurately,</p> <p>2 correct?</p> <p>3 <b>A. Correct.</b></p> <p>4 Q. And it can be in, meaning it came out</p> <p>5 the way it's supposed to be; or it can be out,</p> <p>6 meaning it didn't come out the way it's supposed to</p> <p>7 be, and therefore, there was likely a problem with</p> <p>8 the patient sample test, correct?</p> <p>9 <b>A. That there was a likely problem with</b></p> <p>10 <b>the patient sample test?</b></p> <p>11 Q. The test of the patient sample.</p> <p>12 There was a problem -- likely a problem with the</p> <p>13 test, if the QC does not come in.</p> <p>14 <b>A. You need QC -- acceptable QCs to</b></p> <p>15 <b>report a result.</b></p> <p>16 Q. Right. Well, maybe that's a simpler</p> <p>17 way of what I thought I was saying, but...</p> <p>18 And QC -- for the QC to be referred</p> <p>19 to as being in, that would mean an acceptable QC</p> <p>20 result, correct?</p> <p>21 <b>A. Yes. That's the word I just used.</b></p> <p>22 Q. Okay. Okay. And Dr. Riley says: A</p> <p>23 well-validated, well-cared for assay should be</p> <p>24 robust and reproducible and no magic should be</p> <p>25 necessary.</p>  |
| <p>Page 274</p> <p>1 get QCs in. This is a problem. As a</p> <p>2 well-validated, well-cared-for assay should be</p> <p>3 robust and reproducible and no magic should be</p> <p>4 necessary. The QCs are supposed to be the canaries</p> <p>5 in the mine for the assay, indicators of whether or</p> <p>6 not the prep and analysis processes are working as</p> <p>7 validated.</p> <p>8 Do you see that?</p> <p>9 <b>A. I do.</b></p> <p>10 Q. And by -- assay, she's referring to a</p> <p>11 laboratory test. Is that right?</p> <p>12 <b>A. By assay, she's referring to -- sure,</b></p> <p>13 <b>the laboratory test, yes.</b></p> <p>14 Q. And before you read that, did you</p> <p>15 know that Christina was being asked to work --</p> <p>16 quote, work her magic, unquote, to get QCs in?</p> <p>17 <b>A. I don't believe Christina was working</b></p> <p>18 <b>any magic. I think that was a term, a colloquial</b></p> <p>19 <b>term that was used in a chat.</b></p> <p>20 Q. Okay. To get QCs in, what it means</p> <p>21 is QC stands for quality control, correct?</p> <p>22 <b>A. Correct.</b></p> <p>23 Q. And you get -- you get the result of</p> <p>24 the quality control and that's supposed to help you</p> <p>25 decide whether the test of the unknown sample,</p> | <p>Page 276</p> <p>1 What was Ms. Essington doing to bring</p> <p>2 a QC that was out, to bring it in?</p> <p>3 MR. CEJAS: Objection. Assumes facts</p> <p>4 not in evidence.</p> <p>5 Subject to that, go ahead.</p> <p>6 <b>THE WITNESS: So she was using</b></p> <p>7 <b>scientifically appropriate ways to process data.</b></p> <p>8 <b>So here, she talks about these manipulation include</b></p> <p>9 <b>change in the IS. We still, in our SOPs -- and CAP</b></p> <p>10 <b>has looked at them thoroughly -- are changing the</b></p> <p>11 <b>IS.</b></p> <p>12 It talks about changing the</p> <p>13 regression of the calibration curve. In our SOPs</p> <p>14 today -- and CAP obviously, as you know, has done a</p> <p>15 tremendous amount looking into our practices. We</p> <p>16 are able to change the regression of calibration.</p> <p>17 So things that she's pointing out here are</p> <p>18 practices that we still do in the laboratory today.</p> <p>19 They're not working -- they're not</p> <p>20 working any kind of magic, and they're</p> <p>21 scientifically valid practices that are used not</p> <p>22 only by Averhealth, but by others as well, and are</p> <p>23 allowable by CAP and CLIA.</p> <p>24 MR. PLEBAN: I think she just marked</p> <p>25 some paper.</p> |

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| <p>Page 277</p> <p>1 Did you mark again?</p> <p>2 <b>THE WITNESS: Yes.</b></p> <p>3 MR. PLEBAN: We'll need to do --</p> <p>4 Q. (BY MR. CORNFELD) Did you mark up</p> <p>5 the exhibit?</p> <p>6 <b>A. I underlined two things.</b></p> <p>7 Q. The underlining on?</p> <p>8 <b>A. I underlined the IS used and the</b></p> <p>9 <b>changing of regression calibration curve. Kind of</b></p> <p>10 <b>the two points I just made.</b></p> <p>11 MR. PLEBAN: It's just for this</p> <p>12 written record --</p> <p>13 <b>THE WITNESS: Okay. I apologize.</b></p> <p>14 MR. PLEBAN: -- because you're going</p> <p>15 to have a highlight on an original, and then we</p> <p>16 sort of have an explanation for it.</p> <p>17 <b>THE WITNESS: You should take my pens</b></p> <p>18 <b>away from me.</b></p> <p>19 Q. (BY MR. CORNFELD) Dr. Riley goes on</p> <p>20 to talk about Exhibit [sic] 2, which she says is a</p> <p>21 specific example of an incident where exceptions</p> <p>22 were made to reduce a result.</p> <p>23 Do you see that?</p> <p>24 <b>A. To release a result, yes.</b></p> <p>25 Q. Yeah, to release a result.</p>   | <p>Page 279</p> <p>1 Q. And then Dr. Riley says: I know</p> <p>2 there was a lot of pressure to get results out, and</p> <p>3 I believe that has an impact in the quality. I</p> <p>4 don't think people feel like there is a lot of time</p> <p>5 to troubleshoot, and so Band-Aids and workarounds</p> <p>6 are being used instead.</p> <p>7 Do you see that?</p> <p>8 <b>A. She made -- yes, I do.</b></p> <p>9 Q. Do you see that?</p> <p>10 <b>A. And she may have thought it was a lot</b></p> <p>11 <b>of pressure. She came from a much smaller</b></p> <p>12 <b>laboratory that was doing less than 100 samples a</b></p> <p>13 <b>day to our laboratory that was doing 8,000 samples</b></p> <p>14 <b>a day. So she may have felt that pressure.</b></p> <p>15 Q. So she felt that there was pressure</p> <p>16 that whereas in her laboratory at Saint Louis</p> <p>17 University, she was able to take the time and do</p> <p>18 the work the way it should be done, and that it</p> <p>19 could not be -- occur at Averhealth. That's what</p> <p>20 she's telling you, correct?</p> <p>21 <b>A. No.</b></p> <p>22 MR. CEJAS: Object to form.</p> <p>23 <b>THE WITNESS: I don't believe that --</b></p> <p>24 <b>she's saying she felt pressure.</b></p> <p>25 Q. (BY MR. CORNFELD) Right. She feels</p> |
| <p>Page 278</p> <p>1 And she -- and she describes that</p> <p>2 example. And then she says in the next paragraph:</p> <p>3 I'm not going to beat around the bush. If I was</p> <p>4 called in as an expert witness, and given the data</p> <p>5 from these runs, I would be able to tear them to</p> <p>6 pieces.</p> <p>7 Do you see that?</p> <p>8 <b>A. Yes. But can we go back to example 2</b></p> <p>9 <b>that she gave and give some context to that?</b></p> <p>10 Q. No, I'm asking you about this.</p> <p>11 <b>A. Okay. Those are the words she used.</b></p> <p>12 Q. Did that cause you concern when your</p> <p>13 laboratory director said that the results you were</p> <p>14 getting, the testing you were doing was so bad that</p> <p>15 if she was called as an expert witness, and given</p> <p>16 the data from these tests, she would be able to</p> <p>17 tear them to pieces?</p> <p>18 <b>A. I had confidence in the practices</b></p> <p>19 <b>that we set upon us. We'd been through many CAP</b></p> <p>20 <b>and CLIA inspections, and Dr. Glinn's been in the</b></p> <p>21 <b>industry forever. So I looked at that -- this that</b></p> <p>22 <b>Dr. Riley came in with a different set of eyes and</b></p> <p>23 <b>wanted to make some changes to potentially make</b></p> <p>24 <b>things better, but no, I did not think that we</b></p> <p>25 <b>could be torn apart.</b></p> | <p>Page 280</p> <p>1 pressure and that keeping the test results --</p> <p>2 excuse me. Keeping the test practices from being</p> <p>3 done the way they should be. That's what she</p> <p>4 believed, correct?</p> <p>5 MR. CEJAS: Object to form. Calls</p> <p>6 for speculation.</p> <p>7 Go ahead.</p> <p>8 <b>THE WITNESS: Yeah, I don't know what</b></p> <p>9 <b>she was thinking.</b></p> <p>10 Q. (BY MR. CORNFELD) That's what she</p> <p>11 was saying, correct?</p> <p>12 <b>A. I don't know if that's exactly what</b></p> <p>13 <b>she was saying, how you took her words and said</b></p> <p>14 <b>that that's what her thought process was.</b></p> <p>15 Q. Well, she's saying she was getting</p> <p>16 pressure and they can't get the tests done right.</p> <p>17 That's what she's telling you, correct?</p> <p>18 MR. CEJAS: Object to form.</p> <p>19 Misstates the record.</p> <p>20 Q. (BY MR. CORNFELD) Isn't that --</p> <p>21 isn't that what she's saying?</p> <p>22 <b>A. She said: I know that there's a lot</b></p> <p>23 <b>of pressure to get results out, and I believe this</b></p> <p>24 <b>has an impact on quality. That was her viewpoint</b></p> <p>25 <b>of it.</b></p>  |

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| <p>Page 281</p> <p>1 Q. Yeah, and she sincerely believed</p> <p>2 that, didn't she?</p> <p>3 <b>A. I don't know what she believes or</b></p> <p>4 <b>doesn't believe.</b></p> <p>5 Q. You don't have any reason to think</p> <p>6 that she's making this up. You don't have any</p> <p>7 reason to think --</p> <p>8 <b>A. Practices that she's outlined here</b></p> <p>9 <b>are practices that we still do today. I believe</b></p> <p>10 <b>that she did not have a thorough understanding and</b></p> <p>11 <b>look at enough data, based on our volume and our</b></p> <p>12 <b>amount, to appropriately be able to determine our</b></p> <p>13 <b>practices and whether it was hurting the quality of</b></p> <p>14 <b>test results that were going out.</b></p> <p>15 Q. My -- my -- my question was whether</p> <p>16 she sincerely believed what she was telling you.</p> <p>17 You have no reason to think that she didn't</p> <p>18 sincerely believe that, do you?</p> <p>19 <b>A. It's the words she used.</b></p> <p>20 Q. So you have no reason to think --</p> <p>21 <b>A. Yes, I have no -- I have no reason to</b></p> <p>22 <b>believe that.</b></p> <p>23 <b>I want to go back to example 2,</b></p> <p>24 <b>though, because you didn't give me an opportunity.</b></p> <p>25 <b>You read it and you did not give me an opportunity</b></p>            | <p>Page 283</p> <p>1 right?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. And you never said you disagreed with</p> <p>4 anything she told you, did you?</p> <p>5 <b>A. I did not.</b></p> <p>6 Q. She -- you said: Thank you very much</p> <p>7 for all of the information below. This is in your</p> <p>8 e-mail to her on Sunday afternoon, November 1st at</p> <p>9 3:44.</p> <p>10 Correct?</p> <p>11 <b>A. Correct.</b></p> <p>12 Q. And then you asked her a question,</p> <p>13 wanting to tap into her expertise. You said: We</p> <p>14 currently conduct a dilute-and-shoot method. Does</p> <p>15 that have any factor in the inconsistent QC issues?</p> <p>16 Do you see that?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. What is a dilute-and-shoot method?</p> <p>19 <b>A. Dilute-and-shoot method is the way</b></p> <p>20 <b>that we do the sample cleanup before it goes on to</b></p> <p>21 <b>the LC-MS/MS instrument.</b></p> <p>22 Q. And then you said to Dr. Riley: I</p> <p>23 appreciate the action plan and what you outlined</p> <p>24 will be very beneficial, correct?</p> <p>25 <b>A. Yes.</b></p>   |
| <p>Page 282</p> <p>1 <b>to comment on it.</b></p> <p>2 Q. Okay. Tell me what you want to say</p> <p>3 about it.</p> <p>4 <b>A. Okay. Sure. So she talks about</b></p> <p>5 <b>specifically in the hair batch, and that basically</b></p> <p>6 <b>the quantitative values of the morphine was an</b></p> <p>7 <b>educated guess.</b></p> <p>8 <b>In this specific example, the level</b></p> <p>9 <b>of morphine was reported above the upper limit of</b></p> <p>10 <b>linearity. So on -- on any of our validations, we</b></p> <p>11 <b>go through that process, and if it's above that</b></p> <p>12 <b>number, we report it as greater than. So greater</b></p> <p>13 <b>than 1,600.</b></p> <p>14 <b>So the number in this case really</b></p> <p>15 <b>doesn't matter. She didn't deny that there wasn't</b></p> <p>16 <b>morphine in there. She said that there was. Just</b></p> <p>17 <b>that the number was an educated guess. But we</b></p> <p>18 <b>didn't release a number. We reported it as greater</b></p> <p>19 <b>than the highest calibrator.</b></p> <p>20 Q. All right. Then Dr. Riley presented</p> <p>21 a plan that she believed could help correct these</p> <p>22 issues that she saw, correct?</p> <p>23 <b>A. She did, yes.</b></p> <p>24 Q. All right. And you responded to her</p> <p>25 within just a couple of hours that same Sunday,</p> | <p>Page 284</p> <p>1 Q. And our action plan was an action</p> <p>2 plan to try to correct the problems she saw. Isn't</p> <p>3 that right?</p> <p>4 <b>A. The action plan was to make some</b></p> <p>5 <b>quality improvement, also some projects that we had</b></p> <p>6 <b>going on, yes.</b></p> <p>7 Q. Okay. But it was to correct the</p> <p>8 problems that she saw, wasn't it?</p> <p>9 <b>A. It was also just some general</b></p> <p>10 <b>projects that we had going on in the company.</b></p> <p>11 Q. And it was also an action plan to</p> <p>12 correct the problems she saw, wasn't it?</p> <p>13 <b>A. It was an action plan that she</b></p> <p>14 <b>thought would give us better quality test results.</b></p> <p>15 Q. To correct the problems she saw,</p> <p>16 correct?</p> <p>17 <b>A. That she believed that were problems,</b></p> <p>18 <b>yes, to give us better quality assurance.</b></p> <p>19 Q. All right. Then you said: I agree</p> <p>20 there is pressure to get results out.</p> <p>21 You said that, right?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. And in the next line, you said: We</p> <p>24 need to balance how we get the work out right now</p> <p>25 and take up the time of the team to resolve the</p> |

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| <p>Page 285</p> <p>1 issues, correct.</p> <p>2 Do you see that?</p> <p>3 <b>A. I'm trying to find that paragraph,</b></p> <p>4 <b>so...</b></p> <p>5 Q. It's three lines down in the</p> <p>6 paragraph that begins: I agree that there is</p> <p>7 pressure to get results out.</p> <p>8 <b>A. I see that part. I did not --</b></p> <p>9 Q. I'm sorry, the next line, you said:</p> <p>10 We need to balance how we get the work out right</p> <p>11 now and take up the time of the team to resolve the</p> <p>12 issues.</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. And do you see how Dr. Riley would</p> <p>15 interpret that to mean we can't fully correct the</p> <p>16 accuracy concern right now?</p> <p>17 MR. CEJAS: Object to the form.</p> <p>18 Speculation as to what she understood.</p> <p>19 <b>THE WITNESS: I don't know how she</b></p> <p>20 <b>would think that because I had confidence in our</b></p> <p>21 <b>test results getting reported. I looked at this as</b></p> <p>22 <b>she was looking for some additional improvement,</b></p> <p>23 <b>which we're always looking to improve.</b></p> <p>24 Q. (BY MR. CORNFELD) Well, she -- she</p> <p>25 didn't say just additional improvement as we talked</p>  | <p>Page 287</p> <p>1 Q. -- that's not --</p> <p>2 <b>A. -- are practices that we use today.</b></p> <p>3 Q. That's not my question.</p> <p>4 <b>A. Okay.</b></p> <p>5 Q. My question was: In your response to</p> <p>6 Dr. Riley, when she told you about her significant</p> <p>7 concerns that were so bad that if she were an</p> <p>8 expert witness called against you, she could tear</p> <p>9 the results apart, you didn't disagree with</p> <p>10 anything she said, did you? You had the</p> <p>11 opportunity to, but you didn't disagree with</p> <p>12 anything she said, did you?</p> <p>13 <b>A. I didn't put it in writing, no.</b></p> <p>14 Q. You didn't say, "I am fully confident</p> <p>15 in our results," did you?</p> <p>16 <b>A. I did not put that in writing, no.</b></p> <p>17 Q. Did you call her up and tell her</p> <p>18 that?</p> <p>19 <b>A. We did have a conversation before she</b></p> <p>20 <b>left --</b></p> <p>21 Q. And my --</p> <p>22 <b>A. -- and resigned -- I'm trying -- you</b></p> <p>23 <b>asked me a question, I'm trying to remember the</b></p> <p>24 <b>conversation that we had over the phone.</b></p> <p>25 Q. We will get to that.</p> |
| <p>Page 286</p> <p>1 about. She had significant concerns that were so</p> <p>2 bad that she said she could tear the results apart</p> <p>3 if she were called as an expert witness on it.</p> <p>4 So my question is: When you said we</p> <p>5 need to balance how we get the work out right now</p> <p>6 and take up the time with the team to resolve the</p> <p>7 issues, can't you see that that was interpreted to</p> <p>8 mean that you couldn't fully correct the accuracy</p> <p>9 concern right now?</p> <p>10 <b>A. I was not concerned that we were</b></p> <p>11 <b>incorrectly reporting test results.</b></p> <p>12 Q. You didn't say that in your e-mail,</p> <p>13 did you?</p> <p>14 <b>A. I didn't say what?</b></p> <p>15 Q. That you weren't concerned that you</p> <p>16 were inaccurately reporting test results.</p> <p>17 <b>A. No, that's not written in my e-mail.</b></p> <p>18 Q. And as we already -- you already</p> <p>19 admitted, you didn't take any issue with what she</p> <p>20 said were her concerns when you responded to her</p> <p>21 e-mail, did you?</p> <p>22 <b>A. As I indicated, though, some of these</b></p> <p>23 <b>things that she outlined that were --</b></p> <p>24 Q. Excuse me --</p> <p>25 <b>A. -- her concerns and issues --</b></p> | <p>Page 288</p> <p>1 <b>A. Okay. But you asked a question, I</b></p> <p>2 <b>was answering.</b></p> <p>3 Q. Did you call -- when you -- when you</p> <p>4 got her e-mail --</p> <p>5 <b>A. Yes. I did not call her on Sunday,</b></p> <p>6 <b>no.</b></p> <p>7 Q. And say what -- "What in the world</p> <p>8 are you talking about? Everything we do is</p> <p>9 accurate. I don't know what in the world you're</p> <p>10 talking about." You didn't do anything like that,</p> <p>11 did you?</p> <p>12 <b>A. I did not.</b></p> <p>13 Q. And then Dr. Riley wrote back to you</p> <p>14 that evening, Sunday evening, and if you look at</p> <p>15 that e-mail, she said she would take your concern</p> <p>16 about turnaround time into account, correct?</p> <p>17 <b>A. She said: I totally agree with the</b></p> <p>18 <b>need to balance, and I don't plan on impacting</b></p> <p>19 <b>turnaround time with -- with resolutions right now.</b></p> <p>20 Q. And that's TAT, turnaround time?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. And she says: The plan I outlined</p> <p>23 was by priority.</p> <p>24 Do you see that?</p> <p>25 <b>A. Yes.</b></p>                                |

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| <p>Page 289</p> <p>1 Q. And -- and she discusses what she</p> <p>2 thinks the priority should be, and then she says --</p> <p>3 she answers your question about dilute and shoot.</p> <p>4 She says: I don't think the dilute and shoot is</p> <p>5 the problem. I think it's inconsistency with prep.</p> <p>6 What does -- what does she mean? Do</p> <p>7 you see that?</p> <p>8 A. I do.</p> <p>9 Q. What does she mean by "prep"?</p> <p>10 A. The -- during the sample prep</p> <p>11 process, what the technicians were doing to prep</p> <p>12 the specimens.</p> <p>13 Q. And specimens have to be prepped</p> <p>14 before they're -- they're tested, correct?</p> <p>15 A. Yes.</p> <p>16 Q. And she thought that that was</p> <p>17 resulting in inaccurate test results, correct?</p> <p>18 A. Not inaccurate test results, no.</p> <p>19 Q. Well --</p> <p>20 A. She's talking -- no. She never says</p> <p>21 it made the results wrong. She was talking about</p> <p>22 that as far as the QCs and the acceptance of those.</p> <p>23 Q. Well, the QCs, that means you can't</p> <p>24 be reporting out results, and she said that she</p> <p>25 complained about what she perceived Ms. Essington</p> | <p>Page 291</p> <p>1 state of Michigan wanted to be retested?</p> <p>2 A. There was not a large -- there was</p> <p>3 not an issue, but they were requesting retests as</p> <p>4 we had talked about previously. And so this is</p> <p>5 where there's a batch of retests.</p> <p>6 Q. And -- and the -- on retests, the</p> <p>7 results were inconsistent with the first time,</p> <p>8 correct?</p> <p>9 A. That is not correct.</p> <p>10 Q. The results were different from the</p> <p>11 first time, correct?</p> <p>12 A. I'd have to read through this. I</p> <p>13 don't see where the results are different. It</p> <p>14 actually says here at one point that the retests --</p> <p>15 the results from previous testing are pretty</p> <p>16 consistent for cocaine, BE, and THC. It says BEG</p> <p>17 -- which would again be benzoylecgonine.</p> <p>18 Q. Yeah, I won't take the time to go</p> <p>19 through all this. I'll look at it tonight and we</p> <p>20 can talk about that.</p> <p>21 A. Okay. Okay.</p> <p>22 Q. But let's look at Dr. Riley's e-mail</p> <p>23 on November 3rd, the one on the first page. She</p> <p>24 says: I do not want to report the things that are</p> <p>25 positive now. These, quote, new, unquote,</p> |
| <p>Page 290</p> <p>1 doing in working her magic that resulted in</p> <p>2 reporting out results that shouldn't have been</p> <p>3 reported out, correct?</p> <p>4 MR. CEJAS: Object to the form.</p> <p>5 Calls for speculation.</p> <p>6 THE WITNESS: And again, what she's</p> <p>7 citing is concerns are practiced -- are</p> <p>8 scientifically valid practices that we use today.</p> <p>9 So that's her opinion in looking at very small</p> <p>10 amounts of data within the organization.</p> <p>11 Thank you.</p> <p>12 Q. (BY MR. CORNFELD) I've handed you</p> <p>13 what's been marked as Exhibit 32, which is a</p> <p>14 document bearing the number 85232 on the first</p> <p>15 page. And this is an e-mail exchange between --</p> <p>16 it's an e-mail exchange between Dr. Riley and</p> <p>17 others. Dr. Riley's most recent e-mail is from</p> <p>18 November 3rd, 2020, and the e-mails go back to</p> <p>19 October 23rd, 2020.</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. Have you seen these e-mails before?</p> <p>23 A. Yes. I'm copied on them.</p> <p>24 Q. Okay. Do you recall if there was an</p> <p>25 issue regarding a large number of tests that the</p>          | <p>Page 292</p> <p>1 positives are probably due to the differing lowest</p> <p>2 calibrator mentioned in an earlier e-mail or</p> <p>3 evaporation, but these issues are hard to explain,</p> <p>4 and I think it would add to the confusion. I would</p> <p>5 need to see the chromatography and calibrators from</p> <p>6 the original run before I would be comfortable</p> <p>7 reporting the new positives.</p> <p>8 Do you see that?</p> <p>9 A. I do.</p> <p>10 Q. And so there were new positives. And</p> <p>11 doesn't that look to you like these were results</p> <p>12 that were different?</p> <p>13 A. There's analytical variance that</p> <p>14 especially if a drug is right around the cutoff,</p> <p>15 that when it's run from batch to batch, if it's</p> <p>16 right below the cutoff in one run, it may now be</p> <p>17 right above the cutoff. So yes, it's entirely</p> <p>18 possible.</p> <p>19 Q. That there could be different</p> <p>20 results --</p> <p>21 A. Yes.</p> <p>22 Q. -- in a test and a retest. And</p> <p>23 that's what she's addressing, correct?</p> <p>24 A. Yes.</p> <p>25 Q. And can -- can you sense Dr. Riley's</p>  |



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|---|--|
| <p>Page 293</p> <p>1 frustration from this e-mail?</p> <p>2 <b>A. No. I don't, actually.</b></p> <p>3 Q. You don't think this shows any</p> <p>4 frustration?</p> <p>5 <b>A. I don't.</b></p> <p>6 Q. What --</p> <p>7 <b>A. I think it's her learning our</b></p> <p>8 <b>processes and how things work.</b></p> <p>9 Q. And that she's being frustrated by</p> <p>10 those processes.</p> <p>11 <b>A. I don't read frustration in here.</b></p> <p>12 <b>Thank you.</b></p> <p>13 Q. I've handed you what's been marked as</p> <p>14 Exhibit 33, which bears the Bates number 16111. Do</p> <p>15 you see this is an e-mail from you personally to</p> <p>16 Dr. Riley on November 3rd, 2020, at 11:44 p.m.?</p> <p>17 <b>A. No, this is not -- that's not what I</b></p> <p>18 <b>read.</b></p> <p>19 Q. Wait. What did I get wrong?</p> <p>20 <b>A. There's not an e-mail.</b></p> <p>21 Q. Oh, this is not an e-mail when it</p> <p>22 says from Dominique Delagnes to Sarah Riley?</p> <p>23 <b>A. It's not an e-mail, no.</b></p> <p>24 Q. What is it? What is it?</p> <p>25 <b>A. It's a reoccurring meeting event.</b></p>   | <p>Page 295</p> <p>1 Q. -- on November 3rd.</p> <p>2 <b>A. I recall us going through the e-mail</b></p> <p>3 <b>that she sent and walking through the action plan.</b></p> <p>4 Q. So --</p> <p>5 <b>A. That's the most that I recall. I</b></p> <p>6 <b>don't remember in detail what was discussed.</b></p> <p>7 Q. Do you recall whether you told her</p> <p>8 about the amount of time she would have to rectify</p> <p>9 the situation --</p> <p>10 <b>A. I do not.</b></p> <p>11 Q. -- that she -- you -- do you</p> <p>12 recall --</p> <p>13 <b>A. I don't recall.</b></p> <p>14 Q. Do you recall telling her that there</p> <p>15 was no time right now to do that?</p> <p>16 <b>A. No, I don't.</b></p> <p>17 Q. Do you recall whether you'd said that</p> <p>18 at all or not?</p> <p>19 <b>A. No, I don't.</b></p> <p>20 Q. Other than reviewing the e-mail she</p> <p>21 sent you, do you recall anything else that happened</p> <p>22 at that meeting?</p> <p>23 <b>A. I don't.</b></p> <p>24 Q. Dr. Riley submitted her resignation</p> <p>25 that night, correct?</p>  |
| <p>Page 294</p> <p>1 Q. Okay. And this was a meeting that</p> <p>2 was scheduled for November 3rd at three o'clock for</p> <p>3 approximately half an hour?</p> <p>4 <b>A. For 40 minutes, correct.</b></p> <p>5 Q. All right. 40 minutes.</p> <p>6 And what was -- what was the purpose</p> <p>7 of that meeting on November 3rd?</p> <p>8 <b>A. She and I had already had had</b></p> <p>9 <b>scheduled reoccurring meetings to catch up once a</b></p> <p>10 <b>week. And one of the things that she wanted to do,</b></p> <p>11 <b>obviously, is she had sent that e-mail on Sunday,</b></p> <p>12 <b>and one of the items was to go through her action</b></p> <p>13 <b>plan of what she had written out about what she</b></p> <p>14 <b>wanted to do.</b></p> <p>15 Q. Did you discuss the concerns she had</p> <p>16 addressed to you?</p> <p>17 <b>A. We went through the action plan.</b></p> <p>18 Q. Did you discuss the concerns that she</p> <p>19 had sent to you?</p> <p>20 <b>A. I can't -- I honestly cannot recall</b></p> <p>21 <b>everything that we discussed. That was four years</b></p> <p>22 <b>ago.</b></p> <p>23 Q. Tell me everything you can recall</p> <p>24 about the meeting you had with Dr. Riley --</p> <p>25 <b>A. I don't --</b></p> | <p>Page 296</p> <p>1 <b>A. She never actually sent it to us. It</b></p> <p>2 <b>was not received until Thursday.</b></p> <p>3 Q. How was it received on Thursday?</p> <p>4 <b>A. Because I had learned that she had</b></p> <p>5 <b>called up to one of the judges in the state of</b></p> <p>6 <b>Michigan, so I reached out to her to understand</b></p> <p>7 <b>what was going on. I was in complete surprise.</b></p> <p>8 I believe it was in her draft e-mail,</p> <p>9 and based on my conversation of me reaching out to</p> <p>10 her to ask her, you know, what was her conversation</p> <p>11 with the judge, what had she said, what was going</p> <p>12 on, actually two days later, we had received it</p> <p>13 from her SLU e-mail.</p> <p>14 So I believe it sat in her draft</p> <p>15 e-mail. I never received her resignation on that</p> <p>16 day. Actually, then later learned that she'd sent</p> <p>17 a text message to Shannon Spencer that she had</p> <p>18 resigned, but I didn't learn about it until</p> <p>19 Thursday.</p> <p>20 Q. All right. I --</p> <p>21 <b>A. And she never returned any of my</b></p> <p>22 <b>phone calls about it.</b></p> <p>23 Q. Do you know whether she thought she</p> <p>24 sent it or not? I mean, I can't tell you --</p> <p>25 <b>A. I have no idea.</b></p> |

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|---|--|
| <p>Page 297</p> <p>1 Q. I mean, I -- I can't tell you how<br/>2 many times I find an e-mail in my outbox that I<br/>3 thought I sent and I didn't, and I'm sure I'm not<br/>4 the only person that happens to.<br/>5 <b>A. Well, I didn't receive it.</b><br/>6 Q. Okay.<br/>7 <b>A. I did not receive it from her.</b><br/>8 Q. Well, let's -- before we look at<br/>9 that, let's look at the letter you sent to her in<br/>10 response.<br/>11 <b>A. Thank you.</b><br/>12 Q. I've handed you Exhibit 34, Bates<br/>13 number 15703 addressed to Sarah Riley dated<br/>14 November 6th, 2020, and a place for your signature,<br/>15 Dominique Delagnes, correct?<br/>16 <b>A. Yes.</b><br/>17 Q. Do you see that?<br/>18 And is this the letter that you sent<br/>19 to Dr. Riley on November 6th?<br/>20 <b>A. Yes.</b><br/>21 Q. And you start out: Dear, Sarah. As<br/>22 you know, you resigned on Tuesday evening via<br/>23 e-mail, which was received by Jason and me on<br/>24 November 5th, 2020.<br/>25 So the day before you sent this</p>   | <p>Page 299</p> <p>1 Q. I've handed you what's been marked as<br/>2 Exhibit 35, which bears the Bates number 415.<br/>3 Do you recognize this as an e-mail<br/>4 that Dr. Riley wrote to you and Mr. Herzog<br/>5 submitting her resignation?<br/>6 <b>A. Yes.</b><br/>7 Q. And that was dated November 3rd,<br/>8 2020, at 7:14 p.m.?<br/>9 <b>A. Yes, but it was received on</b><br/>10 <b>November 5th at 12:57.</b><br/>11 Q. Right. Right. Well, you already<br/>12 told us that.<br/>13 And do you see that she thanks you<br/>14 for the offer of lab director and says the business<br/>15 has some good people, but she doesn't think she's a<br/>16 good fit. Correct?<br/>17 <b>A. Yes.</b><br/>18 Q. And in the third paragraph, she says:<br/>19 The lab has deep seated quality issues that will<br/>20 require a significant effort to remedy. It has<br/>21 been explained to me several times that there is no<br/>22 time to rectify these issues and I think the<br/>23 business growth is outpacing the laboratory's<br/>24 ability to produce quality, meaningful data. I am<br/>25 not comfortable being the director of the lab until</p> |
| <p>Page 298</p> <p>1 letter, correct?<br/>2 <b>A. Correct.</b><br/>3 Q. And in the next sentence, you say:<br/>4 While we are disappointed our relationship has<br/>5 ended, we understand your decision.<br/>6 Do you see that?<br/>7 <b>A. I do.</b><br/>8 Q. So you did understand her decision<br/>9 and why she made it?<br/>10 <b>A. I understand that people choose to</b><br/>11 <b>resign from -- from positions.</b><br/>12 Q. And you understand why, because she<br/>13 told you --<br/>14 <b>A. No, I didn't understand why. She</b><br/>15 <b>didn't tell me why.</b><br/>16 Q. You go on to say you recognize that<br/>17 these are extraordinarily difficult times.<br/>18 What did you mean by that?<br/>19 <b>A. That this might not have been the</b><br/>20 <b>position for her, and that it was something that</b><br/>21 <b>she didn't want to do. But I did not in any way</b><br/>22 <b>believe that we were incorrectly reporting test</b><br/>23 <b>results. The scale of our laboratory versus</b><br/>24 <b>laboratories that she had worked in previously was</b><br/>25 <b>quite different.</b></p> | <p>Page 300</p> <p>1 the right opportunity comes to work on the<br/>2 analytical problems.<br/>3 Did I read that correctly?<br/>4 <b>A. Those were her words, yes.</b><br/>5 Q. And you have no reason to think she<br/>6 -- this was not her sincere belief, do you?<br/>7 <b>A. That was her words. That was her</b><br/>8 <b>belief.</b><br/>9 Q. Then -- all right. And then she<br/>10 says: The pace at which the lab is driven and the<br/>11 level of micromanaging is also concerning.<br/>12 She says that, correct?<br/>13 <b>A. Yes.</b><br/>14 Q. And she was telling the truth as she<br/>15 saw it, wasn't she?<br/>16 <b>A. That was her opinion of what she saw.</b><br/>17 Q. All right. And by the level of<br/>18 micromanaging, was she referring to the fact that<br/>19 you were not allowing her to take the time that<br/>20 would be needed to rectify the problems?<br/>21 <b>A. I don't believe that that's the case.</b><br/>22 Q. You don't believe you weren't giving<br/>23 her the time, but do you think that's what she<br/>24 meant?<br/>25 <b>A. I don't know what she meant.</b></p>                                       |

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|---|--|
| <p style="text-align: right;">Page 301</p> <p>1 Q. That that was -- that that's what</p> <p>2 she -- you don't know what she meant by the level</p> <p>3 of micromanaging?</p> <p>4 <b>A. No, I do not.</b></p> <p>5 Q. Also, in your -- in your letter the</p> <p>6 day after you received her resignation e-mail --</p> <p>7 <b>A. Which document is that, just so I can</b></p> <p>8 <b>find it quickly?</b></p> <p>9 Q. Yeah, Exhibit 34.</p> <p>10 <b>A. Thank you.</b></p> <p>11 Q. You -- in the third paragraph, you</p> <p>12 say four lines down, we would like to discuss your</p> <p>13 concerns directly. Please contact me as soon as</p> <p>14 possible to discuss your concerns.</p> <p>15 Do you see that?</p> <p>16 <b>A. I do.</b></p> <p>17 Q. Hadn't you already talked about her</p> <p>18 concerns with her?</p> <p>19 <b>A. She had sent the one e-mail with an</b></p> <p>20 <b>action plan of what she wanted to do from a quality</b></p> <p>21 <b>control. But again, as I had stated previously, I</b></p> <p>22 <b>had confidence that our test results that we put</b></p> <p>23 <b>out were scientifically valid procedures and</b></p> <p>24 <b>accurate.</b></p> <p>25 <b>So I was surprised that she would</b></p> | <p style="text-align: right;">Page 303</p> <p>1 was at three o'clock?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. All right. Don't you think she would</p> <p>4 have wanted to take time to reflect on it and make</p> <p>5 sure that was what she really wanted to do and how</p> <p>6 to explain it?</p> <p>7 <b>A. I would have --</b></p> <p>8 MR. CEJAS: Same objection.</p> <p>9 <b>THE WITNESS: I would have thought in</b></p> <p>10 <b>our conversation where we spoke for 40 minutes, she</b></p> <p>11 <b>would have indicated to the fact that she wasn't</b></p> <p>12 <b>comfortable with our practices.</b></p> <p>13 Q. (BY MR. CORNFELD) Well, you told me</p> <p>14 you don't remember what she said during that</p> <p>15 meeting. Is that right?</p> <p>16 <b>A. If she had told me that she wanted to</b></p> <p>17 <b>resign or had serious concerns, it would have</b></p> <p>18 <b>resonated, but yes, I cannot tell you exactly what</b></p> <p>19 <b>the conversations were in that meeting.</b></p> <p>20 Q. Other than you went over her -- her</p> <p>21 e-mail --</p> <p>22 <b>A. Action plan.</b></p> <p>23 Q. -- her e-mail that it was not just --</p> <p>24 you keep referring to it as an action plan. The</p> <p>25 title -- the subject was: Analytical concerns.</p> |
| <p style="text-align: right;">Page 302</p> <p>1 <b>leave, not make a -- not call me, talk to me about</b></p> <p>2 <b>it, and just in our conversation that we had had,</b></p> <p>3 <b>right, the day that she resigned where we talked</b></p> <p>4 <b>40 minutes, not once did she tell me she was too</b></p> <p>5 <b>uncomfortable to work at the laboratory and wanted</b></p> <p>6 <b>to resign.</b></p> <p>7 Q. Well, she didn't make that decision</p> <p>8 until after she reflected on your conversation,</p> <p>9 correct?</p> <p>10 <b>A. I don't know.</b></p> <p>11 Q. I mean, she -- she wrote her</p> <p>12 resignation letter several hours later, correct?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. It's not like she walked out of that</p> <p>15 meeting with you and immediately said I'm quitting.</p> <p>16 MR. CEJAS: Well, I'll object --</p> <p>17 Q. (BY MR. CORNFELD) Did she?</p> <p>18 MR. CEJAS: -- it calls for</p> <p>19 speculation.</p> <p>20 Q. (BY MR. CORNFELD) Did she?</p> <p>21 MR. CEJAS: Calls for speculation.</p> <p>22 Go ahead, if you know.</p> <p>23 <b>THE WITNESS: The e-mail was drafted</b></p> <p>24 <b>at 7:14 p.m.</b></p> <p>25 Q. (BY MR. CORNFELD) And your meeting</p>                      | <p style="text-align: right;">Page 304</p> <p>1 And the first portion of the e-mail,</p> <p>2 all but five paragraphs, meaning eight</p> <p>3 paragraphs -- or nine paragraphs were on her</p> <p>4 significant concerns that were so bad that if she</p> <p>5 were an expert witness, she could tear apart your</p> <p>6 procedures.</p> <p>7 <b>A. And they're --</b></p> <p>8 Q. Correct?</p> <p>9 <b>A. -- practices and procedures that we</b></p> <p>10 <b>have in place today.</b></p> <p>11 Q. Excuse me. That is what she --</p> <p>12 that's what her e-mail was --</p> <p>13 <b>A. That is --</b></p> <p>14 Q. -- it was not just an action plan,</p> <p>15 which is all you want to refer to it as. It was</p> <p>16 her description of the significant quality concerns</p> <p>17 she saw at Averhealth --</p> <p>18 MR. CEJAS: Object --</p> <p>19 Q. (BY MR. CORNFELD) -- correct?</p> <p>20 MR. CEJAS: Object to the form.</p> <p>21 Argumentative.</p> <p>22 <b>THE WITNESS: She outlines some</b></p> <p>23 <b>things that are still in place today.</b></p> <p>24 Q. (BY MR. CORNFELD) Excuse me --</p> <p>25 <b>A. So in my opinion, they were not</b></p>   |

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| <p style="text-align: right;">Page 305</p> <p><b>1 serious concerns.</b></p> <p>2 Q. You -- you may not think they were</p> <p>3 serious concerns, but she thought they were serious</p> <p>4 concerns.</p> <p><b>5 A. Okay.</b></p> <p>6 Q. Didn't she?</p> <p><b>7 A. Yes, she did.</b></p> <p>8 Q. So serious that she -- and we'll talk</p> <p>9 about this in a moment or maybe tomorrow. She went</p> <p>10 to CAP with those concerns, correct?</p> <p><b>11 A. She did.</b></p> <p>12 Q. All right. And in your letter to</p> <p>13 Dr. Riley on November 6th, your letter in response</p> <p>14 to her e-mail to you, or resignation, rather --</p> <p><b>15 A. Yes.</b></p> <p>16 Q. -- you said you understood her</p> <p>17 decision, you asked her to contact you to talk</p> <p>18 about her concerns. But one thing you didn't say</p> <p>19 was, "You are wrong and we have total confidence in</p> <p>20 our procedures," correct?</p> <p><b>21 A. Correct.</b></p> <p>22 Q. You didn't disagree with anything she</p> <p>23 brought to you?</p> <p><b>24 A. I didn't say -- it's not written in</b></p> <p><b>25 this. I disagree with you, but it is not in</b></p>  | <p style="text-align: right;">Page 307</p> <p>1 faulty today?</p> <p><b>2 A. No.</b></p> <p>3 MR. CEJAS: Object to form.</p> <p>4 Q. (BY MR. CORNFELD) How -- how are</p> <p>5 they different from the practices that were faulty</p> <p>6 in 2020 if they're the same practices today?</p> <p>7 MR. CEJAS: Object to form. Assumes</p> <p>8 facts not in evidence.</p> <p>9 Go ahead.</p> <p><b>10 THE WITNESS: I'm stating that the</b></p> <p><b>11 two things that she outlined specific, that she</b></p> <p><b>12 said were serious practices or concerns, are</b></p> <p><b>13 practices that we have today.</b></p> <p><b>14 The examples she cited, there's --</b></p> <p><b>15 she gave very specific examples, and those are</b></p> <p><b>16 allowable practices that we have in our procedures</b></p> <p><b>17 today, that have been reviewed by CAP, by CLIA, by</b></p> <p><b>18 Dr. Klette, by Dr. Wagner, by everybody else.</b></p> <p>19 (A discussion was held off the</p> <p>20 record.)</p> <p>21 Q. (BY MR. CORNFELD) Did you make any</p> <p>22 of the changes that Dr. Riley suggested in her</p> <p>23 action plan?</p> <p><b>24 A. What's that exhibit again? Is that</b></p> <p><b>25 29? No, it's not 29.</b></p>  |
| <p style="text-align: right;">Page 306</p> <p><b>1 writing in this letter.</b></p> <p>2 Q. You never sent her a letter that</p> <p>3 disagreed with her. You never sent her an e-mail</p> <p>4 or a letter, and you can't recall if you ever said</p> <p>5 verbally that you disagreed with her, correct?</p> <p><b>6 A. Correct.</b></p> <p>7 Q. If -- if somebody believed that</p> <p>8 what -- that Dr. Riley's concerns were valid and</p> <p>9 were substantiated, and you were -- have those same</p> <p>10 procedures in place today, then wouldn't that</p> <p>11 person have to conclude that your procedures today</p> <p>12 are faulty?</p> <p><b>13 A. That is too broad of a question. Can</b></p> <p><b>14 you be more specific.</b></p> <p>15 Q. Well, if Dr. Riley raised concerns,</p> <p>16 you said that her concerns pertained to practices</p> <p>17 that you still have in place today.</p> <p><b>18 A. Yes.</b></p> <p>19 Q. If somebody agreed with Dr. Riley's</p> <p>20 concerns and then found out that you have those</p> <p>21 same practices in place today, and that was</p> <p>22 somebody knowledgeable in the field of forensic</p> <p>23 toxicology, wouldn't that person have to conclude,</p> <p>24 if they agreed that Dr. Riley raised concerns that</p> <p>25 your practices were faulty, that they're still</p> | <p style="text-align: right;">Page 308</p> <p>1 MR. PLEBAN: 31.</p> <p><b>2 THE WITNESS: 31. Thank you. Number</b></p> <p><b>3 one, we never implemented the screening cutoffs at</b></p> <p><b>4 the lower levels. We did work with the state of</b></p> <p><b>5 Michigan, they raised their cutoff levels. So we</b></p> <p><b>6 introduced amino assay screening at that time.</b></p> <p><b>7 I believe there were some method</b></p> <p><b>8 improvements made with the hair tests.</b></p> <p><b>9 Number three, she wanted to look for</b></p> <p><b>10 a summary of QCs. I know we've -- you know, we</b></p> <p><b>11 continuously do training with data reviewers. She</b></p> <p><b>12 talks about developing a training presentation, so</b></p> <p><b>13 if -- we didn't have that, but obviously they have</b></p> <p><b>14 continuous education and training on data</b></p> <p><b>15 reviewing.</b></p> <p><b>16 And then Christina asked for some</b></p> <p><b>17 additional training, that Sarah talks about, she</b></p> <p><b>18 found Sciex courses that could be used as</b></p> <p><b>19 continuing education.</b></p> <p>20 Q. (BY MR. CORNFELD) Handing you what's</p> <p>21 been marked as Exhibit 36, which bears the Bates</p> <p>22 number 413. This is an e-mail exchange between you</p> <p>23 and Dr. Riley, along with Christina Essington on</p> <p>24 November 3rd and November 4th.</p> <p>25 Do you see that?</p> |

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1 **A. Yes.**  
2 Q. And the most recent e-mail was sent  
3 -- she sent it to you on November 4th, 2020, at  
4 12:57 in the morning, correct?  
5 **A. Pardon? I'm sorry?**  
6 Q. Dr. Riley --  
7 **A. Can you repeat what you said?**  
8 Q. Dr. Riley sent you the e-mail at the  
9 top of the page, which is the most recent in this  
10 thread --  
11 **A. Okay.**  
12 Q. -- on November 4th, 2020, at 12:57.  
13 **A. Yes.**  
14 Q. That's 12:57 a.m., correct?  
15 **A. Yes.**  
16 Q. And so that was the same night she  
17 wrote her resignation, correct?  
18 **A. Tuesday, November 3rd was from me.**  
19 Q. She sent that e-mail about  
20 seven o'clock in the evening on November 3rd, and  
21 this is after midnight that same night, correct?  
22 **A. Yes, I'm trying to reconcile the time**  
23 **frame. Yes.**  
24 Q. All right. And this --  
25 **A. So she sent an e-mail after she**

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1 **resigned?**  
2 Q. Do you recall this e-mail?  
3 **A. I didn't recall it until looking at**  
4 **it now.**  
5 Q. And do you recall it now?  
6 **A. Yes.**  
7 Q. All right. And this had to do with  
8 an issue in one of her batches, correct? Actually,  
9 two of her batches.  
10 **A. Issue, no. The results weren't**  
11 **actually released, so it was when she went to**  
12 **upload the results in Aversys and released them,**  
13 **they still sat in pending.**  
14 Q. Well, the reason I use the word  
15 "issue," is that in your e-mail initiating this  
16 thread, you said: Good evening, Sarah. Two of the  
17 batches you did yesterday seem to have an issue.  
18 Correct?  
19 **A. That's the word I used, yes.**  
20 Q. All right. And what she says in her  
21 e-mail after midnight was: I came into the lab and  
22 fixed the dextromethorphan.  
23 **A. Methorphan.**  
24 Q. Methorphan issue. Those should be  
25 released now. I went back Superman -- Superman was

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1 one of your testing machines?  
2 **A. It is.**  
3 Q. Okay. And she went back to it to  
4 check the THC. THC is -- is a drug that you're  
5 testing for?  
6 **A. Correct.**  
7 Q. To check the THC pending from that  
8 batch. And she gives the batch number. And none  
9 of the accession numbers that are sitting in the  
10 queue are in the batch on MultiQuant.  
11 Correct?  
12 **A. Yes.**  
13 Q. MultiQuant is your software program?  
14 **A. It's the Sciex software program**  
15 **that's tied to the LC-MS instruments, yes.**  
16 Q. Okay. And was this after she had  
17 written her resignation letter, and she still  
18 thought she ought to go in the lab to fix an issue,  
19 correct?  
20 **A. I don't know what time she came back**  
21 **to the lab, I just know what time it was sent to**  
22 **me.**  
23 Q. After midnight. Correct?  
24 **A. The e-mail was sent after midnight.**  
25 **I don't know what time she was physically at the**

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1 **lab, though.**  
2 Q. Well, once she -- once she resigned,  
3 she could have said forget it, it's your problem,  
4 you deal with it, right?  
5 **A. Could have.**  
6 Q. And she didn't. Whether she drove to  
7 the lab at midnight or just sent her e-mail to you  
8 at midnight, did you ever thank her for that, for  
9 doing that after she resigned?  
10 MR. CEJAS: Object to the form.  
11 Assumes facts not in evidence.  
12 **THE WITNESS: I don't believe so.**  
13 Q. (BY MR. CORNFELD) Instead, in the  
14 months ahead, you smeared her to CAP, correct?  
15 MR. CEJAS: Objection. Assumes facts  
16 not in evidence, argumentative.  
17 Q. (BY MR. CORNFELD) Correct?  
18 **A. No.**  
19 Q. What's not correct?  
20 **A. That we did not smear her to CAP.**  
21 Q. Well, we'll look at the --  
22 **A. Okay.**  
23 Q. -- names you called her to CAP.  
24 **A. Thank you.**  
25 Q. I've handed you what's been marked as



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| <p style="text-align: right;">Page 313</p> <p>1 Exhibit 37, which is a Microsoft Teams chat between</p> <p>2 two Averhealth employees that was produced by</p> <p>3 Averhealth to us.</p> <p>4 Are you familiar with this document?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. All right. Is this the -- the</p> <p>7 message that you said Dr. Riley sent to Shannon</p> <p>8 Spencer that you saw subsequently?</p> <p>9 <b>A. I never actually saw the text</b></p> <p>10 <b>message, but yes.</b></p> <p>11 Q. I'm sorry?</p> <p>12 <b>A. I've never seen the actual text</b></p> <p>13 <b>message that went from Dr. Riley to Shannon</b></p> <p>14 <b>Spencer.</b></p> <p>15 Q. Okay. Ms. Spencer copied that text</p> <p>16 message in her e-mail, or excuse me, in her chat</p> <p>17 with Ellen Tomko, correct?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. Ellen Tomko being another Averhealth</p> <p>20 employee?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. When did you see this document?</p> <p>23 <b>A. In the last several weeks.</b></p> <p>24 Q. In preparation for the deposition?</p> <p>25 <b>A. Yes.</b></p>   | <p style="text-align: right;">Page 315</p> <p>1 But if you know, go ahead.</p> <p>2 <b>THE WITNESS: I don't know.</b></p> <p>3 Q. (BY MR. CORNFELD) You have no idea?</p> <p>4 <b>A. I don't.</b></p> <p>5 Q. And you don't remember what response</p> <p>6 you had in that meeting that you held with her?</p> <p>7 <b>A. I don't.</b></p> <p>8 Q. Or any of the other conversations she</p> <p>9 refers to when she says we've had a few</p> <p>10 conversations about it?</p> <p>11 <b>A. No, I don't.</b></p> <p>12 Q. Do you know if Ms. Spencer responded</p> <p>13 to Dr. Riley?</p> <p>14 <b>A. I don't know.</b></p> <p>15 Q. All right. You know that the day</p> <p>16 after Dr. Riley resigned from Averhealth, she filed</p> <p>17 a former -- a formal complaint against Averhealth</p> <p>18 with the College of American Pathologists, or CAP?</p> <p>19 <b>A. I know there was a complaint filed.</b></p> <p>20 <b>I didn't know the exact date.</b></p> <p>21 Q. Well, you know it was shortly after</p> <p>22 she resigned, correct?</p> <p>23 <b>A. I believe so.</b></p> <p>24 MR. CEJAS: Just as reminder, Rick,</p> <p>25 we've got about 30 minutes, I think, roughly on the</p> |
| <p style="text-align: right;">Page 314</p> <p>1 Q. The e-mail that -- that Ms. Spencer</p> <p>2 copied from Dr. Riley says: Hi, Shannon. I wanted</p> <p>3 to let you know that I just resigned. I'm too</p> <p>4 uncomfortable with the quality issues and with</p> <p>5 Dominique's response to me bringing them up. We've</p> <p>6 had a few conversations about it, and I just don't</p> <p>7 think I'm a good fit. I think you are awesome and</p> <p>8 I'm really sorry it turned out like this. Please</p> <p>9 stay in touch.</p> <p>10 Do you see that?</p> <p>11 <b>A. I do.</b></p> <p>12 Q. Have you talked to Ms. Spencer about</p> <p>13 this?</p> <p>14 <b>A. I have not had a conversation since</b></p> <p>15 <b>looking at this through discovery with Ms. Spencer</b></p> <p>16 <b>about it, no.</b></p> <p>17 Q. Or an e-mail exchange or a chat?</p> <p>18 <b>A. No.</b></p> <p>19 Q. You haven't communicated with her?</p> <p>20 <b>A. (Witness indicated.)</b></p> <p>21 Q. What do you think Dr. Riley meant by</p> <p>22 the quality issues and with Dominique's response to</p> <p>23 me bringing them up?</p> <p>24 MR. CEJAS: Objection. Calls for</p> <p>25 speculation.</p> | <p style="text-align: right;">Page 316</p> <p>1 seven hours.</p> <p>2 MR. CORNFELD: 30 minutes left?</p> <p>3 MR. CEJAS: Roughly. It's about</p> <p>4 six o'clock now.</p> <p>5 MR. PLEBAN: You're saying 6:30 is</p> <p>6 our cutoff, or 7:00?</p> <p>7 MR. CEJAS: I think it's right around</p> <p>8 6:30.</p> <p>9 MR. PLEBAN: Thank you.</p> <p>10 Q. (BY MR. CORNFELD) I've handed you --</p> <p>11 no, I haven't. I'm handing you what's marked</p> <p>12 Exhibit 38, which bears the Bates number on the</p> <p>13 first page 56436, and is an e-mail from Amanda</p> <p>14 Doane of the Michigan Department of Health and</p> <p>15 Human Services to you, among others.</p> <p>16 Correct?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. And that's dated November 5th,</p> <p>19 correct?</p> <p>20 <b>A. I mean, the original e-mail, yes.</b></p> <p>21 Q. And she's calling a Microsoft Teams</p> <p>22 meeting, correct?</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. And she attaches as part of the</p> <p>25 thread an e-mail, if you look at page 56438, an</p>   |

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| <p style="text-align: right;">Page 317</p> <p>1 e-mail from Terence Ackert, dated Wednesday<br/>2 November 4th, 2020, to a number of people.<br/>3 Correct?<br/>4 <b>A. Yes.</b><br/>5 Q. And do you understand that Terence<br/>6 Ackert was a judge in Michigan?<br/>7 <b>A. Yes.</b><br/>8 Q. All right. And he says: Greetings.<br/>9 I received a telephone call today from Dr. Sarah<br/>10 Riley, the former director of labs at Averhealth.<br/>11 Do you see that?<br/>12 <b>A. Yes.</b><br/>13 Q. And that telephone call today would<br/>14 have been November -- Wednesday, November 4th,<br/>15 meaning the day after she -- she wrote out her<br/>16 resignation, correct?<br/>17 <b>A. Yes.</b><br/>18 Q. And then in the next paragraph, Judge<br/>19 Ackert says: Dr. Riley informed me that last<br/>20 night, she terminated her position as lab director<br/>21 of Averhealth because of her serious concerns that<br/>22 Averhealth has failed to follow standard testing<br/>23 procedures and is not compliant with the standards<br/>24 developed by the College of American Pathologists.<br/>25 Do you see that?</p>        | <p style="text-align: right;">Page 319</p> <p>1 <b>concerns.</b><br/>2 Q. Right. I understand that.<br/>3 <b>A. I don't believe we were following</b><br/>4 <b>them.</b><br/>5 Q. I'm sorry?<br/>6 <b>A. I don't believe that -- that what she</b><br/>7 <b>said we were doing caused our test results to be</b><br/>8 <b>reported inaccurately.</b><br/>9 Q. All right. But I understand that<br/>10 you're saying you disagree with Dr. Riley, with her<br/>11 expert opinion as a toxicologist, which you are<br/>12 not. But considering that she had those concerns,<br/>13 you have no quarrel with her bringing them to the<br/>14 attention of CAP, do you?<br/>15 MR. CEJAS: Object to the form.<br/>16 Argumentative.<br/>17 Go ahead.<br/>18 <b>THE WITNESS: She needs to do what</b><br/>19 <b>she believes.</b><br/>20 Q. (BY MR. CORNFELD) All right.<br/>21 Otherwise, she'd be guilty of a cover-up, right?<br/>22 MR. CEJAS: Object to the form to the<br/>23 extent you're implying there's something criminal.<br/>24 MR. CORNFELD: I'm not implying that<br/>25 it's criminal. That's not for me to decide.</p>         |
| <p style="text-align: right;">Page 318</p> <p>1 <b>A. Yes.</b><br/>2 Q. And then at the end of that<br/>3 paragraph, he says: Dr. Riley advised me that she<br/>4 had -- has filed a formal complaint against<br/>5 Averhealth with the College of American<br/>6 Pathologists, correct?<br/>7 <b>A. Yes.</b><br/>8 Q. And you were copied on this -- not on<br/>9 this e-mail, but you were sent a copy in the e-mail<br/>10 from Ms. Doane --<br/>11 <b>A. Yes.</b><br/>12 Q. -- correct? So you knew at the time<br/>13 that the day after Dr. Riley resigned, she<br/>14 submitted that formal complaint with CAP?<br/>15 <b>A. Yes.</b><br/>16 Q. And considering that Dr. Riley<br/>17 sincerely believed that Averhealth had deep seated<br/>18 quality problems that it was not addressing, don't<br/>19 you agree that you would have been obligated to<br/>20 bring those to the attention of CAP?<br/>21 <b>A. Yes.</b><br/>22 Q. So you don't have any complaint with<br/>23 her about going to CAP about this, do you?<br/>24 <b>A. If she had concerns, she needs to</b><br/>25 <b>raise them. It doesn't mean I agree with her</b></p> | <p style="text-align: right;">Page 320</p> <p>1 Q. (BY MR. CORNFELD) But --<br/>2 <b>A. There is no cover-up.</b><br/>3 Q. -- a cover up -- no, she would be<br/>4 guilty of a cover-up if she didn't bring those<br/>5 concerns to CAP, wouldn't she?<br/>6 MR. CEJAS: Same objection.<br/>7 Go ahead.<br/>8 <b>THE WITNESS: I -- there was nothing</b><br/>9 <b>to cover-up.</b><br/>10 Q. (BY MR. CORNFELD) But --<br/>11 <b>A. We had been --</b><br/>12 Q. -- don't you think she would believe<br/>13 she'd be guilty of a cover-up? She had serious<br/>14 concerns about problems with Averhealth's quality<br/>15 that were not being addressed, and she kept those<br/>16 to herself and didn't bring them to the attention<br/>17 of the courts in Michigan or to the College of<br/>18 American Pathologists, that she'd be guilty of a<br/>19 cover-up?<br/>20 MR. CEJAS: Object to the form.<br/>21 Calls for speculation as to what some other witness<br/>22 believed.<br/>23 <b>THE WITNESS: I don't know what she</b><br/>24 <b>would -- what she would have believed.</b><br/>25 Q. (BY MR. CORNFELD) You don't know</p> |

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| <p style="text-align: right;">Page 321</p> <p>1 that she would think, oh, I can't cover this up,<br/>2 I've got to do something?<br/>3 MR. CEJAS: Same objection.<br/>4 <b>THE WITNESS: No, I don't know what</b><br/>5 <b>she would believe.</b><br/>6 Q. (BY MR. CORNFELD) I've handed you<br/>7 what's been marked as Exhibit 39, which bears the<br/>8 Bates number on the first page 17080 and is a<br/>9 letter on the letterhead of College of American<br/>10 Pathologists dated November 11, 2020, to Michele<br/>11 Glinn, PhD at Averhealth, and is signed by Earle<br/>12 S. Collum, M.D., Complaints and Investigations<br/>13 Committee Chair of the CAP accreditation program.<br/>14 Do you have that?<br/>15 <b>A. Yes.</b><br/>16 Q. All right. And Collum is spelled<br/>17 C-O-L-L-U-M.<br/>18 This -- this is the letter in which<br/>19 CAP informed Averhealth of Dr. Riley's complaints,<br/>20 correct?<br/>21 <b>A. Yes.</b><br/>22 Q. And it relates to complaint number,<br/>23 if you look at the upper right-hand corner, 10219,<br/>24 correct?<br/>25 <b>A. Yes.</b></p> | <p style="text-align: right;">Page 323</p> <p>1 <b>A. They were allegations about our</b><br/>2 <b>processes.</b><br/>3 Q. Were they serious?<br/>4 <b>A. They were allegations. I mean, who's</b><br/>5 <b>to determine whether they're serious or not.</b><br/>6 Q. I'm asking what Averhealth thought<br/>7 when it saw this. Didn't it think oh, my gosh,<br/>8 this is really serious?<br/>9 <b>A. They were concerning.</b><br/>10 Q. And serious with -- they were<br/>11 serious, they were concerning because they were<br/>12 concerns, but they were serious, weren't they?<br/>13 MR. CEJAS: Objection. Asked and<br/>14 answered.<br/>15 Q. (BY MR. CORNFELD) Didn't Averhealth<br/>16 consider this was serious?<br/>17 <b>A. We had confidence in our test results</b><br/>18 <b>to receive this. We knew that we needed to go</b><br/>19 <b>through and show that our processes that we used</b><br/>20 <b>provided us to have scientifically valid results.</b><br/>21 Q. That's not my question. My question<br/>22 is --<br/>23 <b>A. Okay.</b><br/>24 Q. -- when you saw this, didn't you<br/>25 think, my gosh, this is really serious?</p> |
| <p style="text-align: right;">Page 322</p> <p>1 Q. And Dr. Collum states that: The<br/>2 College of American Pathologists, or CAP,<br/>3 accreditation program has received a complaint<br/>4 containing the following allegations.<br/>5 Correct?<br/>6 <b>A. Yes.</b><br/>7 Q. And then he lists four allegations<br/>8 concern with regard to mass spectrometry<br/>9 confirmatory testing. That's number one.<br/>10 Number two, failure to follow<br/>11 procedures as written.<br/>12 Number three, concerns regarding<br/>13 instrument calibrations.<br/>14 And four, concerns regarding the<br/>15 review of quality control results.<br/>16 Correct?<br/>17 <b>A. Yes.</b><br/>18 Q. These were serious allegations,<br/>19 weren't they?<br/>20 <b>A. They were allegations.</b><br/>21 Q. They were serious allegations,<br/>22 weren't they?<br/>23 <b>A. They were allegations.</b><br/>24 Q. Did you consider them serious or<br/>25 frivolous?</p>   | <p style="text-align: right;">Page 324</p> <p>1 MR. CEJAS: Objection. Asked and<br/>2 answered.<br/>3 Go ahead one last time.<br/>4 <b>THE WITNESS: We knew that we needed</b><br/>5 <b>to show that our processes were valid.</b><br/>6 Q. (BY MR. CORNFELD) You didn't<br/>7 consider this frivolous or something you could blow<br/>8 off. This was really -- and you spent a lot of<br/>9 time --<br/>10 <b>A. Anything --</b><br/>11 Q. -- and a lot of work --<br/>12 <b>A. -- from the regulatory bodies is</b><br/>13 <b>something that we know that we can't just blow off.</b><br/>14 <b>Right.</b><br/>15 Q. And it's serious, isn't it, when a<br/>16 regulatory body comes and says they've gotten the<br/>17 following -- these following allegations, including<br/>18 failure to follow your procedures, concerns with<br/>19 your mass spectrometry confirmatory testing, your<br/>20 instrument calibrations, your review of quality<br/>21 control results, you won't admit that those are<br/>22 serious?<br/>23 MR. CEJAS: Objection. Asked and<br/>24 answered. It's argumentative at this point.<br/>25 Go ahead.</p>                     |

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1           **THE WITNESS: As I've indicated**  
2 **before, we had confidence in our test results we**  
3 **put out. Yes, these allegations were there and we**  
4 **needed to show the American -- the College of**  
5 **American Pathologists that we had practices that**  
6 **resulted in accurate test results.**  
7       Q. (BY MR. CORNFELD) I don't understand  
8 why you won't admit that these are serious. Would  
9 you look at the camera, tell the jury that you are  
10 not agreeing that these are serious allegations?  
11       MR. CEJAS: Object to the form. It's  
12 argumentative. She's asked and answered it five  
13 different times.  
14       Q. (BY MR. CORNFELD) Go ahead. Tell  
15 them -- tell the jury whether you considered these  
16 serious allegations.  
17       MR. CEJAS: Same objections.  
18       Q. (BY MR. CORNFELD) And also the  
19 Court.  
20       MR. CEJAS: Same objections. Asked  
21 and answered, argumentative.  
22       **THE WITNESS: Anytime CAP has written**  
23 **to us about somebody who has raised a concern, we**  
24 **take it very seriously and we look into it.**  
25       Q. (BY MR. CORNFELD) You take it very

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1 seriously because these were serious allegations,  
2 correct?  
3       MR. CEJAS: Objection. Asked and  
4 answered, argumentative. She just answered the  
5 question again.  
6       Q. (BY MR. CORNFELD) Go ahead.  
7       MR. PLEBAN: No, it wasn't.  
8       MR. CEJAS: Go ahead.  
9       **THE WITNESS: Okay. Do you want me**  
10 **to state again what I've already stated?**  
11       Q. (BY MR. CORNFELD) I want you to tell  
12 the jury whether or not you considered this  
13 serious, not whether you took it seriously --  
14       **A. Anytime we receive anything from a**  
15 **governing body, we take it very seriously.**  
16       Q. I'm not asking whether you take it  
17 seriously.  
18       **A. Okay.**  
19       Q. Of course you take it seriously when  
20 they ask you to send them all this information they  
21 asked you in this letter. I'm asking whether you  
22 considered these to be serious allegations.  
23       MR. CEJAS: Objection. Asked and  
24 answered now many times. It's argumentative. One  
25 last time and then we're moving on.

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1           Go ahead.  
2       **THE WITNESS: We looked into these,**  
3 **we responded, and we showed that we had solid**  
4 **procedures that had us accurately report test**  
5 **results.**  
6       Q. (BY MR. CORNFELD) Okay. Is that  
7 your answer to the Court and jury about whether you  
8 considered these allegations serious?  
9       **A. I indicated anything that we received**  
10 **from the College of American Pathologists we take**  
11 **seriously.**  
12       Q. I didn't ask that.  
13       **A. Okay. Well, you did because you said**  
14 **that it came from the College of American**  
15 **Pathologists --**  
16       Q. When they sent you -- when they sent  
17 you the -- the proficiency test materials, you take  
18 that -- anything they send you, you take serious.  
19 I'm asking about the allegations, whether you  
20 considered them serious allegations.  
21       **A. Serious as any other time that we**  
22 **receive written correspondence from the College of**  
23 **American Pathologists.**  
24       Q. When they said that you failed to  
25 follow procedures as written, is that a serious

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1 allegation?  
2       **A. It's concerning, yes.**  
3       Q. All right. And then he -- Dr. Collum  
4 elaborates on one of those -- one of those  
5 allegations.  
6       **A. Okay.**  
7       Q. In his bullet point, he says: A  
8 concern was raised in regard to mass spectrometry  
9 testing. The concerns pertain specifically to how  
10 quality controls, internal standards defined cutoff  
11 and calibration data are interpreted prior to the  
12 release of patient results. There are also  
13 concerns that practice does not follow laboratory  
14 procedures.  
15       Was it serious that he had those  
16 concerns?  
17       MR. CEJAS: Objection. Calls for  
18 speculation to whether these are his concerns or  
19 someone else's, assumes facts not in evidence.  
20       Go ahead, subject to that.  
21       **THE WITNESS: He was reporting of**  
22 **concerns that were raised by Dr. Riley to the**  
23 **College of American Pathologists.**  
24       Q. (BY MR. CORNFELD) All right. And  
25 then, he wants to investigate those concerns, so he

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| <p>Page 329</p> <p>1 asked you to provide a long list of information,<br/>2 didn't he?<br/>3 <b>A. Yes.</b><br/>4 Q. And they dealt with specific CAP<br/>5 requirements?<br/>6 <b>A. Yes.</b><br/>7 Q. Some of them dealt with tests on<br/>8 specific dates and even a specific test by<br/>9 accession number, correct?<br/>10 <b>A. Yes.</b><br/>11 Q. Do you know why he selected those?<br/>12 <b>A. I do not know why he selected those.</b><br/>13 MR. CEJAS: My numbers are off.<br/>14 MR. CORNFELD: Yeah, I didn't give<br/>15 them to you in order.<br/>16 MR. CEJAS: You skipped some.<br/>17 MR. CORNFELD: Well, I didn't. I<br/>18 just got them out of order. I'll read off what<br/>19 they are. This is 44.<br/>20 MR. CEJAS: Is there no 41?<br/>21 MR. PLEBAN: No, not yet.<br/>22 MR. CORNFELD: I'm sorry, 41, I<br/>23 misread it.<br/>24 MR. PLEBAN: This one is 41?<br/>25 MR. CORNFELD: Yeah.</p>  | <p>Page 331</p> <p>1 judges and officials of the Michigan Department of<br/>2 Health and Human Services to present its story<br/>3 about the -- the complaint that was made to CAP,<br/>4 correct?<br/>5 <b>A. There were questions in Michigan,<br/>6 based on the phone call that Dr. Riley had had with<br/>7 Judge Ackert, and so they were asking us -- I think<br/>8 in one of the messages, it indicated that we needed<br/>9 to get on a phone call, and so yes, we wanted to<br/>10 make sure that we could respond to questions around<br/>11 test results.</b><br/>12 Q. All right. If we look at Exhibit 43,<br/>13 Mr. Herzog's memo to Judge Ackert.<br/>14 <b>A. Yes.</b><br/>15 Q. He starts out by saying: The<br/>16 allegation raised by Sarah Riley -- who he calls<br/>17 Riley -- are very concerning.<br/>18 Correct?<br/>19 <b>A. Yes.</b><br/>20 Q. By the way, is there a reason why<br/>21 Averhealth never refers to Dr. Riley as Dr. Riley?<br/>22 <b>A. This is --</b><br/>23 Q. It's always Sarah Riley, never<br/>24 Dr. Riley.<br/>25 <b>A. This is from Jason, so I'm not sure</b></p> |
| <p>Page 330</p> <p>1 MR. PLEBAN: There you go. Good?<br/>2 MR. CEJAS: I'm good. Thank you.<br/>3 Q. (BY MR. CORNFELD) This is 44.<br/>4 <b>A. 44. Mrs. Delagnes, I just marked and<br/>5 handed you five exhibits. Exhibit 40 is a memo on<br/>6 Averhealth's letterhead from Mr. Herzog to Thomas<br/>7 Boyd, the state court administrator of Michigan<br/>8 Supreme Court.<br/>9 Exhibit 41 is an e-mail from<br/>10 Mr. Herzog to Colin Parks and Amanda Doane dated<br/>11 November 13, 2020.<br/>12 Exhibit 42 is a memo on Averhealth<br/>13 letterhead by Mr. Herzog to Colin Parks, manager of<br/>14 Michigan's Child's Protective Service program<br/>15 office dated November 12th, 2022.<br/>16 Exhibit 43 is a memo from Mr. Herzog<br/>17 to Judge Ackert on Averhealth stationary dated<br/>18 November 12th, 2020.<br/>19 And Exhibit 44 is an e-mail from<br/>20 Austin Cady to Shelly Hunter dated December 3rd,<br/>21 2020.<br/>22 Do you have those?<br/>23 <b>A. I do.</b><br/>24 Q. All right. So Averhealth took no<br/>25 time in sending these e-mails and messages to</b></p> | <p>Page 332</p> <p>1 <b>why he indicated that in this memo.</b><br/>2 Q. I'm not talking about just this memo.<br/>3 <b>A. Okay.</b><br/>4 Q. I have never seen any document in<br/>5 which Averhealth ever referred to Dr. Riley by her<br/>6 title Dr. Riley.<br/>7 <b>A. I don't know.</b><br/>8 Q. You don't know why that is?<br/>9 <b>A. Correct.</b><br/>10 Q. She is -- she is a PhD, she is<br/>11 entitled to the title doctor, correct?<br/>12 <b>A. She is a PhD.</b><br/>13 Q. As a father of a PhD, I think that's<br/>14 very important that they always be given that<br/>15 title. And maybe that's just me and not<br/>16 Mr. Herzog.<br/>17 MR. CEJAS: Object to the form. Not<br/>18 a question.<br/>19 Q. (BY MR. CORNFELD) All right. He --<br/>20 in -- at the end of the second paragraph of<br/>21 Exhibit 43, Mr. Herzog tells Judge Ackert: The<br/>22 false allegations -- and he's referring to<br/>23 Dr. Riley's allegations as false; is that right?<br/>24 <b>A. Yes.</b><br/>25 Q. And he says that the false</p>  |



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1 allegations reported to CAP, FDT -- and FDT refers  
2 to the Forensic Drug Testing arm of CAP, correct?  
3 **A. It does.**  
4 Q. All right. And that's the specific  
5 arm of CAP that regulates Averhealth, correct?  
6 **A. I'm sorry, can you say that again? I**  
7 **was reading and I didn't fully hear your question.**  
8 **I apologize.**  
9 Q. CAP FDT, meaning College of American  
10 Pathologists Forensic Drug Testing, that's the  
11 specific part of CAP that regulates Averhealth,  
12 correct?  
13 **A. Yes.**  
14 Q. All right. And he says: The false  
15 allegations were reported to CAP FDT, and he means  
16 by Dr. Riley, correct?  
17 **A. Yes.**  
18 Q. And he says: And we are confident  
19 that CAP FDT will deem the allegations as  
20 unsubstantiated, correct?  
21 **A. Yes.**  
22 Q. And that's what he told Judge Ackert?  
23 **A. Yes.**  
24 Q. Correct?  
25 And then in the next paragraph, he

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1 says: For unknown reasons, Riley appears to have  
2 become disgruntled.  
3 Do you see that?  
4 **A. I do.**  
5 Q. That wasn't true, that there were  
6 unknown reasons. You knew why Dr. Riley was  
7 unhappy. She told you.  
8 **A. She had raised some analytical**  
9 **concerns that we had indicated that she could put**  
10 **in an action plan.**  
11 Q. I understand, but these were not  
12 unknown reasons why she became disgruntled. They  
13 were very well known by Averhealth because  
14 Dr. Riley told you, didn't she?  
15 **A. She raised some -- in-process**  
16 **improvements she wanted to make, yes.**  
17 Q. So why did Mr. Herzog tell Judge  
18 Ackert in Michigan that they were unknown reasons?  
19 **A. I don't know.**  
20 Q. That wasn't true, was it?  
21 **A. You -- I mean, tell me you're going**  
22 **to ask Mr. Herzog.**  
23 Q. I'll ask him why he said that. I'm  
24 asking you, it wasn't true that they were unknown,  
25 was it?

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1 **A. The fact that she was indicating that**  
2 **our results were wrong 20 to 30 percent of the time**  
3 **was not a factual statement and not accurate --**  
4 Q. I understand -- I understand you --  
5 you disagree with -- with her beliefs. But they  
6 weren't unknown, she had her reasons, didn't she?  
7 And so what Mr. Herzog told Judge Ackert was false,  
8 wasn't it?  
9 MR. CEJAS: Objection. Asked and  
10 answered.  
11 Go ahead.  
12 **THE WITNESS: I'm rereading how the**  
13 **sentence is written. Just bear with me for a**  
14 **minute.**  
15 Q. (BY MR. CORNFELD) The sentence  
16 states: For unknown reasons, Riley appears to have  
17 become disgruntled.  
18 He didn't say she has her reasons,  
19 but we think she's wrong. He said that she didn't  
20 have reasons. For unknown reasons, she appears to  
21 have become disgruntled.  
22 **A. Can I reread it without -- sorry, I**  
23 **apologize. Can I just read it myself?**  
24 **But it says: For unknown reasons,**  
25 **Riley appears to have become disgruntled.**

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1 Q. Right. And that wasn't true, because  
2 you told her --  
3 **A. The question was why she became**  
4 **disgruntled, right?**  
5 Q. She became disgruntled because she  
6 thought that the practices were so bad that if she  
7 were an expert witness against Averhealth, she  
8 could tear them to pieces. That's not unknown, is  
9 it?  
10 MR. CEJAS: Object to form. Calls  
11 for speculation.  
12 Go ahead.  
13 **THE WITNESS: We believed in the**  
14 **practice that we had, so we didn't understand why**  
15 **she became disgruntled.**  
16 Q. (BY MR. CORNFELD) That's not --  
17 that's not -- she told you why she became  
18 disgruntled.  
19 **A. Okay.**  
20 Q. Didn't she?  
21 **A. Yes.**  
22 Q. All right. So it wasn't unknown, was  
23 it? You might have disagreed, you might have  
24 thought she was all wrong, but she had her reasons  
25 and Mr. Herzog told something that was false when

|   |   |
|---|---|
| <p>Page 337</p> <p>1 he said the reasons were unknown. Correct?</p> <p>2 MR. CEJAS: Objection. Asked and</p> <p>3 answered.</p> <p>4 Go ahead.</p> <p>5 <b>THE WITNESS: The root unknown of why</b></p> <p>6 <b>she thought that we had such quality issues when we</b></p> <p>7 <b>were confident in what we reported, that's --</b></p> <p>8 <b>that's what we're trying to state here.</b></p> <p>9 Q. (BY MR. CORNFELD) That's not what he</p> <p>10 said, did he? He didn't say --</p> <p>11 <b>A. That is not what he said. That was</b></p> <p>12 <b>the intention of what was written in here.</b></p> <p>13 Q. He could have easily said she came to</p> <p>14 us with her concerns and we don't believe they are</p> <p>15 real concerns.</p> <p>16 <b>A. Okay.</b></p> <p>17 Q. That's not what he said, is it? He</p> <p>18 said for unknown reasons, and he knew that reasons.</p> <p>19 MR. CEJAS: Objection.</p> <p>20 Argumentative. Also calls for speculation as to</p> <p>21 what he knew or didn't know.</p> <p>22 Q. (BY MR. CORNFELD) Go ahead.</p> <p>23 <b>A. As I've indicated previously, we --</b></p> <p>24 <b>we didn't understand why she had become so</b></p> <p>25 <b>disgruntled when we were confident in our test</b></p> | <p>Page 339</p> <p>1 plan to implement.</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. Do you see that? Why didn't he</p> <p>4 mention her significant concerns and that she said</p> <p>5 your practices were so bad that she could tear them</p> <p>6 to pieces? She did more than just write about four</p> <p>7 continuous improvement ideas and a plan to</p> <p>8 implement. Why didn't he tell her -- tell him</p> <p>9 that?</p> <p>10 <b>A. That was her opinion, and we had</b></p> <p>11 <b>confidence in the practices that we had in place.</b></p> <p>12 Q. I understand that, but why -- when</p> <p>13 he's summarizing what happened, why didn't he tell</p> <p>14 Judge Ackert anything more than she had some</p> <p>15 continuous improvement ideas, and why he thought --</p> <p>16 she thought they needed improvement, and that's</p> <p>17 because your practices were so terrible?</p> <p>18 <b>A. We didn't believe that they were so</b></p> <p>19 <b>terrible.</b></p> <p>20 Q. Why didn't he tell --</p> <p>21 <b>A. We had --</b></p> <p>22 Q. If he told Dr. -- Judge Ackert about</p> <p>23 Dr. Riley's e-mail, why didn't he tell him the</p> <p>24 complete story about it? Why did he pick and</p> <p>25 choose what he preferred to say?</p> |
| <p>Page 338</p> <p>1 <b>results, so to that, that was unknown to us.</b></p> <p>2 Q. She told you what the reasons were,</p> <p>3 didn't she?</p> <p>4 <b>A. She -- she -- she wrote down reasons</b></p> <p>5 <b>in an e-mail.</b></p> <p>6 Q. All right.</p> <p>7 MR. CEJAS: And we are at seven</p> <p>8 hours, Rick, so I'm not stopping you right now, but</p> <p>9 we need to wrap up in, like, the next five minutes.</p> <p>10 MR. CORNFELD: Okay. Let me -- let</p> <p>11 me just finish these.</p> <p>12 MR. CEJAS: How much longer? That's</p> <p>13 fine, you can ask a couple questions. How much</p> <p>14 longer do you think?</p> <p>15 MR. CORNFELD: Five, ten minutes</p> <p>16 maybe.</p> <p>17 MR. CEJAS: Five minutes is fine.</p> <p>18 Q. (BY MR. CORNFELD) Let's take a look</p> <p>19 at -- strike that.</p> <p>20 If you look on Exhibit 43, do you see</p> <p>21 that he refers to his table -- he refers to</p> <p>22 Dr. Riley's e-mail to you in the first -- the first</p> <p>23 line? He says: Riley e-mailed Dominique Delagnes</p> <p>24 -- who he calls -- he calls you Delagnes --</p> <p>25 regarding four continuous improvement ideas and her</p>  | <p>Page 340</p> <p>1 <b>A. I don't know.</b></p> <p>2 Q. All right. Take a look at the e-mail</p> <p>3 from Exhibit 41, the e-mail from Mr. Herzog to</p> <p>4 Colin Parks. And by the way, the -- the memo that</p> <p>5 Mr. Herzog sent to Averhealth, that was an official</p> <p>6 statement on behalf of the company, correct?</p> <p>7 MR. PLEBAN: To Michigan?</p> <p>8 <b>THE WITNESS: The e-mail that he sent</b></p> <p>9 <b>to Averhealth?</b></p> <p>10 Q. (BY MR. CORNFELD) No, the memo. The</p> <p>11 memo that Dr. -- that Mr. Herzog sent to Judge</p> <p>12 Ackert, Exhibit 43.</p> <p>13 <b>A. Uh-huh.</b></p> <p>14 Q. He wasn't just expressing his own</p> <p>15 view. That was an official statement on behalf of</p> <p>16 Averhealth, wasn't it?</p> <p>17 <b>A. It was.</b></p> <p>18 Q. If you look at Exhibit 41,</p> <p>19 Mr. Herzog's e-mail to Colin Parks and Amanda</p> <p>20 Doane, they're employees of the Michigan Department</p> <p>21 of Health and Human Services, which was your</p> <p>22 customer in Michigan?</p> <p>23 <b>A. Correct.</b></p> <p>24 Q. And he refers to a meeting that was</p> <p>25 going to take place that day?</p>  |

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1 **A. Correct.**

2 Q. That was a meeting to explain

3 Averhealth's position regarding Dr. Riley's

4 complaint; is that right?

5 **A. Not Dr. Riley's complaint, because we**

6 **didn't know what the specific complaint was, but to**

7 **address the -- what we had learned, whatever**

8 **attachment that you'd indicated of what was sent to**

9 **Dr. Ackert -- Judge -- sorry, Judge Ackert.**

10 Q. Did you know about -- had you

11 received the letter from CAP at that point?

12 **A. So this was the 13th, the letter from**

13 **CAP was 11th.**

14 MR. PLEBAN: 39.

15 **THE WITNESS: What number was it?**

16 **31?**

17 MR. PLEBAN: 9.

18 **THE WITNESS: 39.**

19 Q. (BY MR. CORNFELD) Which was

20 November 11th.

21 **A. Which was the 11th.**

22 Q. Sent by express mail.

23 **A. Uh-huh.**

24 Q. So you would have had that at that

25 point, correct?

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1 **A. I'm not sure if we had it in our**

2 **hands yet, but I can certainly confirm that, if it**

3 **wasn't sent by express mail.**

4 Q. You would have received that on the

5 12th, then, right?

6 **A. I'm not sure if we had.**

7 Q. Okay.

8 **A. This was to address the conversation**

9 **and the e-mail that Amanda Doane had sent.**

10 Q. All right. And Mr. Herzog says at

11 the second-to-last bullet: They are also confident

12 -- this is a talking point. So I assume he's

13 referring to Averhealth, when he says: They are

14 also confident that CAP FDT will find these

15 allegations to be unsubstantiated.

16 Is that right?

17 **A. Yes.**

18 Q. Are these talking points that he

19 expects Mr. Parks and Ms. Doane to -- to express?

20 **A. I don't understand the question.**

21 Q. Who is going to provide these talking

22 points at the meeting?

23 **A. Who's going to talk on the meeting?**

24 Q. Yes.

25 **A. I -- I don't recall who did the**

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1 **talking on the meeting.**

2 Q. All right. Take a look at Exhibits

3 40 and 42.

4 **A. Okay.**

5 Q. And by the way, who was at the

6 meeting? Was it judges or officials with MDHHS, or

7 who?

8 **A. I don't remember.**

9 Q. And it wasn't a private meeting, so

10 anything that Averhealth said at the meeting would

11 be public, correct?

12 **A. It was not an internal meeting, if**

13 **that's your question.**

14 Q. Okay. Then if you look at Exhibits

15 40 and 42. Exhibit 40, an official memo on behalf

16 of Averhealth sent by Mr. Herzog to Judge Boyd, who

17 was the state court administrator of the Michigan

18 Supreme Court, and to Colin Parks, Exhibit 42, to

19 Colin Parks, manager of the Child Protective

20 Service of Michigan, both dated November 12th,

21 2020, correct?

22 **A. Correct.**

23 Q. And they -- they look pretty similar,

24 but I just want to call your attention to a couple

25 of statements. At the end of the paragraph that

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1 starts November 2020, Mr. Herzog again says: We

2 are confident that CAP FDT will deem the

3 allegations as unsubstantiated.

4 Did you see that?

5 **A. I do.**

6 Q. And you said Averhealth is

7 considering legal options.

8 Do you see that?

9 **A. I do.**

10 Q. All right. And what did Averhealth

11 mean by that? What legal options?

12 **A. I honestly am not sure.**

13 Q. Were you considering suing Dr. Riley?

14 **A. I don't -- I'm not sure.**

15 Q. You didn't sue Dr. Riley, did you?

16 **A. No.**

17 Q. And in the last paragraph of each of

18 these Averhealth memos, the one to Judge Boyd of

19 the Michigan Supreme Court and one to the manager

20 of the Child Protective Service in Michigan, he

21 says: Perhaps unlike others, we fully embrace

22 transparency.

23 Do you see that?

24 **A. I do.**

25 Q. And we self-report our mistakes.

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1 Do you see that?

2 **A. I do.**

3 Q. Do you consider that Averhealth fully

4 embraces transparency?

5 **A. I do.**

6 MR. CEJAS: Even your own watch is

7 cutting you off. I don't have to say anything.

8 Q. (BY MR. CORNFELD) And look at

9 Exhibit 44, that's --

10 MR. PLEBAN: Did you get an answer?

11 Q. (BY MR. CORNFELD) -- from Austin

12 Cady to --

13 MR. PLEBAN: Did you get an answer to

14 your last question?

15 MR. CORNFELD: I think I did.

16 **THE WITNESS: I did. I said I do.**

17 MR. PLEBAN: Okay. I'm sorry.

18 **THE WITNESS: No problem.**

19 Q. (BY MR. CORNFELD) From Austin Cady

20 of Averhealth to Shelly Hunter. And Shelly Hunter

21 is a representative of an Averhealth client,

22 correct? She's -- she's with St. Vincent Catholic

23 Charities in Lansing, Michigan, if you look at the

24 second page.

25 **A. Okay. I was going to say...**

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1 Q. And -- and he also says, as

2 Mr. Herzog said: The false allegations reported to

3 CAP FDT, and we are confident that CAP FDT will

4 deem the allegations as unsubstantiated.

5 Correct?

6 **A. Correct.**

7 Q. Did it turn out that confidence that

8 CAP would deem the allegations unsubstantiated, did

9 it turn out that that confidence was well-founded?

10 **A. CAP threw it -- had come and looked**

11 **at several things. There were parts of their**

12 **checklist that they wanted us to change. There**

13 **were some of the allegations that were not**

14 **substantiated, and there are others that were.**

15 Q. Did they find that Dr. Riley's

16 allegations were substantiated?

17 **A. Not all of them. Not all.**

18 Q. Some of them?

19 **A. Yes.**

20 Q. Some of the serious concerns that

21 she -- and we'll look at that.

22 **A. Okay.**

23 Q. So what -- what Mr. Herzog told all

24 of these judges and officials in Michigan that you

25 were confident that Averhealth [sic] would deem the

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1 allegations unsubstantiated turned out not to be

2 true?

3 **A. When CAP came through and inspected**

4 **us, there were some things that they did find that**

5 **were substantiated.**

6 Q. Did you go back to these people and

7 say, you know what, we were wrong?

8 **A. We did not.**

9 Q. Is that the kind of the transparency

10 that Averhealth believes in?

11 **A. It's with -- what goes on between us**

12 **and our regulatory body is something that, I mean,**

13 **we still had confidence. One of the things that**

14 **they looked at --**

15 MR. CEJAS: Go ahead.

16 **THE WITNESS: -- when they came on**

17 **was the four -- the -- of the six things that they**

18 **looked at when they came on site, one of them was**

19 **that we consistently reported incorrect or false**

20 **positive test results, and that was not**

21 **substantiated.**

22 Q. (BY MR. CORNFELD) That --

23 **A. So we were confident in the test**

24 **results that we continued to report.**

25 Q. That was not one of Dr. Riley's

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1 allegations, was it?

2 **A. She said our results were wrong 20 to**

3 **30 percent of the time.**

4 Q. That -- that was not the -- well,

5 we'll go through -- we'll go through that.

6 My question is: When CAP found that

7 her allegations were substantiated, and you did not

8 go back to these people, don't you think they must

9 have thought, oh, CAP must have found that

10 Dr. Riley was all wrong?

11 MR. CEJAS: Object to the form.

12 Foundation, assumes, facts not in evidence.

13 Go ahead.

14 **THE WITNESS: The one big thing that**

15 **she said out there was that our results were wrong**

16 **20 to 30 percent of the time.**

17 Q. (BY MR. CORNFELD) I'm not talking

18 about one big thing.

19 **A. And that is a huge thing.**

20 Q. I'm not talking about --

21 **A. That is our test results and the**

22 **accuracy of those test results.**

23 Q. I'm not talking about that.

24 **A. And our -- CAP did not find that our**

25 **test results were wrong.**

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1 Q. My -- my question is: Don't you  
2 think that the judges and the officials in  
3 Michigan, after Dr. Herzog said that you were  
4 confident they'd find the allegations  
5 unsubstantiated, they must have thought, yeah, that  
6 must have happened since CAP -- since Averhealth,  
7 which believes in transparency, didn't come and  
8 tell us that?  
9 MR. CEJAS: Objection. Calls for  
10 speculation.  
11 **THE WITNESS: And I don't understand**  
12 **the question. That was -- what are you -- can you**  
13 **rephrase your question? I don't understand it.**  
14 Q. (BY MR. CORNFELD) When the -- when  
15 the judges and the officials with Michigan's Child  
16 Protection Agency were told by Averhealth that you  
17 were confident that CAP would find the allegations  
18 unsubstantiated and they never came back to them  
19 and said, hey, they did find that Dr. Riley's  
20 allegations were substantiated, don't you think  
21 that they would have concluded, oh, I guess they  
22 found that Dr. Riley was wrong?  
23 MR. CEJAS: Object to the form.  
24 Calls for speculation. Assumes facts not in  
25 evidence.

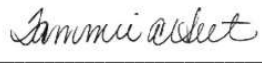
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1 Go ahead.  
2 **THE WITNESS: Based on CAP's**  
3 **checklist, they came in, they investigated us, as**  
4 **you indicated earlier very thoroughly, and there**  
5 **were some updates that they wanted us to make to**  
6 **our SOPs to further define things, based on what**  
7 **she had raised.**  
8 Q. (BY MR. CORNFELD) My question has to  
9 do with the judges and the officials in Michigan  
10 who you told you were confident that CAP would find  
11 all the allegations unsubstantiated. When they  
12 didn't hear anything more about that from you,  
13 don't you think they would have concluded that, oh,  
14 CAP -- Averhealth must be right, CAP must have  
15 found they were all unsubstantiated, or CAP, which  
16 believes -- or Averhealth, which believes in  
17 transparency, would have come and told us that?  
18 MR. CEJAS: Objection. Calls for  
19 speculation.  
20 **THE WITNESS: I don't know what the**  
21 **judges would have thought.**  
22 MR. CORNFELD: All right. We can  
23 break for the day.  
24 MR. CEJAS: Well, we're done with the  
25 corporate representative deposition and we'll come

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1 back tomorrow and do individual.  
2 MR. CORNFELD: Well, subject to the  
3 issues regarding the -- that she was not able to  
4 answer. But yes, yes. And subject to the fact  
5 that we just got almost a thousand pages of  
6 documents on Friday that we may need to ask about.  
7 MR. PLEBAN: We're good on the video.  
8 MR. CEJAS: We're good on the video.  
9 THE VIDEOGRAPHER: Time is 6:43, and  
10 we're off the record.  
11 MR. CEJAS: And just for the record,  
12 the written record, my position is you have seven  
13 hours under the rule for the corporate rep. The  
14 seven hours is over and finished with. However,  
15 you do have the ability to, you know, depose both  
16 Dominique and Michele in their individual  
17 capacities, and we can revisit that later if we  
18 need to.  
19 MR. CORNFELD: All right.  
20 MR. PLEBAN: And it could be that --  
21 I think we're good.  
22  
23  
24  
25

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1 NOTARIAL CERTIFICATE  
2  
3 I, Tammie A. Heet, Registered Professional  
4 Reporter, certified Shorthand Reporter for the  
5 State of Illinois, and Certified Court Reporter for  
6 the state of Missouri and a duly commissioned  
7 Notary Public within and for the States of Missouri  
8 and Illinois, do hereby certify that the witness  
9 whose testimony appears in the foregoing deposition  
10 was duly sworn by me; that the testimony of said  
11 witness was taken by me to the best of my ability  
12 and thereafter reduced to typewriting under my  
13 direction; that I am neither counsel for, related  
14 to, nor employed by any of the parties to the  
15 action in which this deposition was taken, and  
16 further that I am not a relative or employee of any  
17 attorney or counsel employed by the parties  
18 thereto, nor financially or otherwise interested in  
19 the outcome of the action.  
20  
21   
22  
23 Tammie A. Heet, RPR, CSR, CCR  
24  
25



| Page 353   | Page 355  |
|--|---|
| <p>1 Lexitas Legal</p> <p>2 711 North 11th Street</p> <p>3 St. Louis, Missouri 63101</p> <p>4 Phone 314/644-2191</p> <p>5 July 15, 2024</p> <p>6 Mr. Nicholas P. Cejas</p> <p>7 ARMSTRONG TEASDALE, LLP</p> <p>8 7700 Forsyth Boulevard, Suite 1800</p> <p>9 St. Louis, Missouri 63105</p> <p>10</p> <p>11 IN RE: Katarzyna Foulger, et al. v. Avertest, LLC</p> <p>12 d/b/a Averhealth</p> <p>13 Dear Mr. Cejas:</p> <p>14 Please find attached your copy of the video-recorded</p> <p>15 deposition of Dominique Delagnes taken on July 8,</p> <p>16 2024, in the above-referenced case. Also enclosed</p> <p>17 is the original signature page and errata sheets.</p> <p>18</p> <p>19 Please have the witness read your copy of the</p> <p>20 transcript, indicate any changes and/or corrections</p> <p>21 desired on the errata sheets, and sign the</p> <p>22 signature page before a notary public.</p> <p>23 Please return the errata sheets and notarized</p> <p>24 signature page to Lexitas Legal, ATTN: Production</p> <p>25 Department, 711 N. 11th Street, St. Louis, Missouri</p> <p>63101 within 30 days of receipt of this letter.</p> <p>Sincerely,</p> <p>Tammie A. Heet, RPR, CSR, CCR</p> <p>Enclosures</p> <p>cc: Mr. Richard Cornfeld</p> <p>Lexitas Legal Production</p> | <p>1 DOMINIQUE DELAGNES</p> <p>2 NAME OF DEPONENT</p> <p>3 DEPOSITION CORRECTION SHEET</p> <p>4 IN RE: Katarzyna Foulger, et al. v. Avertest, LLC</p> <p>5 d/b/a Averhealth</p> <p>6 Reported by: TAH</p> <p>7 Upon reading the deposition and before subscribing</p> <p>8 thereto, the deponent indicated the following</p> <p>9 changes should be made:</p> <p>10 Page Line Should Read:</p> <p>11 Reason assigned for change:</p> <p>12 Page Line Should Read:</p> <p>13 Reason assigned for change:</p> <p>14 Page Line Should Read:</p> <p>15 Reason assigned for change:</p> <p>16 Page Line Should Read:</p> <p>17 Reason assigned for change:</p> <p>18 Page Line Should Read:</p> <p>19 Reason assigned for change:</p> <p>20 Page Line Should Read:</p> <p>21 Reason assigned for change:</p> <p>22 Page Line Should Read:</p> <p>23 Reason assigned for change:</p> <p>24</p> <p>25 _____</p> <p>SIGNATURE OF DEPONENT</p> |
| <p>1 STATE OF _____ )</p> <p>2 )</p> <p>3 CITY OF _____ )</p> <p>4</p> <p>5 I, DOMINIQUE DELAGNES, do hereby certify:</p> <p>6 That I have read the foregoing deposition;</p> <p>7 That I have made such changes in form and/or</p> <p>8 substance to the within deposition as might be</p> <p>9 necessary to render the same true and correct;</p> <p>10 That having made such changes thereon, I</p> <p>11 hereby subscribe my name to the deposition.</p> <p>12 I declare under penalty of perjury that the</p> <p>13 foregoing is true and correct.</p> <p>14</p> <p>15 Executed this _____ day of _____,</p> <p>16 20____, at _____.</p> <p>17</p> <p>18 _____</p> <p>19 DOMINIQUE DELAGNES</p> <p>20 My Commission Expires: _____</p> <p>21 Notary Public: _____</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>   |   |